

have determined that the licensee should show cause why License No. 13-11822-01 should not be revoked. In view of the foregoing circumstances surrounding the licensee's apparent abandonment of the material and its business premises, I have also determined that the public health, safety, and interest require an immediate suspension of License No. 13-11822-01 and transfer of the material to an authorized recipient within 5 days of issuance of this Order.

III

Accordingly, pursuant to Sections 81, 161(b), and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30 and 34, it is hereby ordered that:

A. Effective immediately, License No. 13-11822-01 is suspended pending further order, and the licensee shall cease and desist from any use of byproduct material in its possession and from any further acquisition or receipt of byproduct material;

B. Within 5 days of the issuance of this Order the licensee shall transfer or permit the transfer of all radioactive material within its possession to a person authorized to possess such material; and

C. The licensee shall show cause, as provided in Section IV below, why License No. 13-11822-01 should not be revoked.

IV

Within 25 days of the date of this Order, the licensee may show cause why the license should not be revoked, as required in Section III.C. above, by filing a written answer under oath or affirmation that sets forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order in substantially the form proposed in this

Order to Show Cause. Upon failure of the licensee to file an answer within the specified time, the Director of the Office of Inspection and Enforcement may issue without further notice an Order revoking License No. 13-11822-01.

V

The licensee may request a hearing on this Order within 25 days after the issuance of this Order. Any answer to the Order or request for a hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for a hearing shall not stay the immediate effectiveness of sections III.A and III.B of this order.

If the licensee requests a hearing on this Order, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of the matters set forth in Section II of this Order, License No. 13-11822-01 should be revoked.

Dated at Bethesda, Maryland this 22 day of July 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director Office of Inspection and Enforcement.

[FR Doc. 82-20711 Filed 7-29-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-651]

Oklahoma Bar Corp.; Notice of Application and Opportunity for Hearing

July 20, 1982.

Notice is hereby given that Oklahoma Bar Corporation ("Applicant") has filed

an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Section 12(g)(1) of the 1934 Act.

The Application states, in part that exemption from the reporting requirements of the 1934 Act would not be inconsistent with the public interest since there will be no public market for the securities of the Applicant and virtually no trading interest. Furthermore, adequate financial information will be provided to shareholders in an annual report.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than AUG 16 1982 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street N.W. Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegate authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-20704 Filed 7-29-82; 6:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 147

Friday, July 30, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

Securities and Exchange Commission. 1, 2

1

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 2, 1982, in Room 6059, 450 5th Street, NW., Washington, D.C.

Closed meetings will be held on Tuesday, August 3, 1982, at 10:00 a.m. and on August 5, 1982 at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5

U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 3, 1982, at 10:00 a.m., will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Institution of administrative proceeding of an enforcement nature.
Litigation matter.

The subject matter of the closed meeting scheduled for Thursday, August 5, 1982, at 10:00 a.m., will be:

Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire (202) 272-2400.

July 28, 1982.

[S-1107-82 Filed 7-28-82; 2:40 pm]

BILLING CODE 8010-01-M

2

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 47 FR 32008,
July 23, 1982.

STATUS: Closed meetings.

PLACE: Room 6059, 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED:
Wednesday, July 21, 1982.

CHANGES IN THE MEETING: Additional items. The following additional item will be considered at a closed meeting scheduled for Tuesday, July 27, 1982, at 10:00 a.m.

Authorization for former staff member to discuss non-public information concerning and enforcement matter.

The following additional items will be considered at a closed meeting scheduled for Wednesday, July 28, 1982, following the 10:00 a.m. open meeting:

Institution of injunctive action.

Litigation matters.

Reject settlement of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Thomas and Longstreth determined by vote that Commission business required consideration of this matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Richard Starr at (202) 272-3195.

July 28, 1982.

[S-1108-82 Filed 7-28-82; 2:41 pm]

BILLING CODE 8010-01-M

Registered

Friday
July 30, 1982

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedes
Decisions to General Wage
Determination Decisions

Modifications and supersedes decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedes decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedes

decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:		
AL81-1296	.....	Oct. 2, 1981.
AL82-1020	.....	Apr. 2, 1982.
Illinois:		
IL82-2001	.....	Jan. 15, 1982.
IL82-2034	.....	May 7, 1982.
New York: NY81-3030	.....	May 1, 1981.
Oregon: OR82-5100	.....	Mar. 12, 1982.
Pennsylvania:		
PA81-3027	.....	July 17, 1981.
PA81-3029	.....	July 10, 1981.
New Mexico: NM80-4101	.....	Dec. 19, 1980.
Missouri: MO81-4055	.....	July 10, 1981.

Supersedes Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedes decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:		
AL81-1034 (AL82-1034)	.....	Dec. 30, 1980.
AL81-1131 (AL82-1035)	.....	Dec. 30, 1980.
AL81-1133 (AL82-1037)	.....	Dec. 30, 1980.
AL81-1034 (AL82-1036)	.....	Dec. 30, 1980.
Illinois:		
IL79-2078 (IL82-2038)	.....	Sept. 21, 1979.
IL79-2080 (IL82-2038)	.....	Sept. 14, 1979.

Please note that we are changing the format for **Federal Register** wage decisions to coincide with the provisions

of All Agency Memorandum No. 132 dated January 29, 1980 which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedure is being phased in gradually.

Signed at Washington, D.C. this 23rd day of July 1982.

Dorothy P. Come,

*Assistant Administrator, Wage and Hour
Division.*

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. AL81-1296 Mod. #1 (47 FR 50222 dated October 2, 1981)	Area 4: Unskilled Semi-Skilled Skilled	Area 6: Unskilled Semi-Skilled Skilled	Area 8: Unskilled Semi-Skilled Skilled	Area 9: Unskilled Semi-Skilled Skilled	DECISION NO. IL82-2034 - MOD. #1 (47 FR 19869 - May 7, 1982) Champaign, Clark, Coles, Cumberland, Dewitt, Douglas, Edgar, Macon, Moultrie, Piatt, Shelby, & Vermillion Counties, Illinois Change: Laborers: Clark, Douglas, Edgar, Moultrie (E & L), & Piatt (S & L) Cos.: Unskilled Semi-Skilled Skilled Macon & Moultrie (W & L) Cos.: Unskilled Semi-Skilled Skilled Shelby Co.: Unskilled Semi-Skilled Skilled Vermillion Co.: Unskilled Semi-Skilled Skilled	Basic Hourly Rates	Pringe Benefits
Lawrence, Limestone, & Morgan Counties, Alabama Building Construction CHANGE: BRICKLAYERS CARPENTERS Carpenters Millwrights ELECTRICIANS PLUMBERS & PIPEFITTERS	\$13.50	10.50 11.15 14.50 2.27	1.39 1.39 2.27	1.39 1.39 2.27			
DECISION NO. AL82-1020 - Mod. #2 (47 FR 14341 dated April 2, 1982)							
Madison County, Alabama Building Construction CHANGE: BRICKLAYERS CEMENT MASONS ELECTRICIANS PAINTERS PLUMBERS & PIPEFITTERS SHEET METAL WORKERS	\$13.50 13.75 14.30 10.65 14.10 14.67	2.27 2.75 1.77					
DECISION NO. IL82-2001 - MOD. #3 (47 FR 2459 - January 15, 1982) Alexander, Champaign, Christian, Clark, Clay, Coles, Crawford, Cumberland, Dewitt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Moultrie, Perry, Piatt, Pope, Pulaski, Richland, Saline, Shelby, Union, Vermillion, Wabash, Wayne, White, & Williamson Counties, Illinois Change: Laborers: Area 2: Unskilled Semi-Skilled Skilled Area 3: Unskilled Semi-Skilled Skilled	\$14.75 14.95 15.10 14.05 14.25 14.40	\$1.35 1.35 1.35 2.05 2.05 2.05					

MODIFICATION PAGE 2

MODIFICATION PAGE 2

DECISION NO. NY81-1030 - MOD. #1 (46 FR 24850 - May 1, 1981) CATARAUGUS, CHAUTAQUA & ERIE COUNTIES, NEW YORK	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
CHANGE: ASBESTOS WORKERS BOILERMAKERS BRICKLAYERS Erie County & Cattaraugus County (the township of Perryburg and the town of Gowanda) Bricklayers, Tuck Point- ers, Cleaners, Caulkers & Stone Masons Marble Masons Terrazzo Workers & Tile Setters CEMENT MASONS Erie County Cement Masons Swing Scaffold ELEVATOR CONSTRUCTOR ELEVATOR CONSTRUCTOR HELPER ELEVATOR CONSTRUCTOR HELPERS PROBATIONARY GLAZIERS IRONWORKERS Chautauqua County (Town ships of Cherry Creek, Ellington, Sheridan, Ark- wright, Charlotte, Vil- nova & Brockton) Erie County (except the northern half of Grand Island) Cattaraugus County Structural Ornamental, Rodman, Reinforcing, Riggers Sheeter Fence Erectors	16.10 14.80 16.18 15.895 15.80 16.98 17.25 17.335 12.13 8.67 14.44 13.97 14.37 13.06	3.02 3.280 3.75 3.75 3.75 2.60 2.60 2.465+ b+c 2.465+ b+c 4.00 3.57 3.57 3.57	14.66 16.95 18.49 11.795 11.895 11.945 11.995 12.045 11.795 10.18 10.43 10.33	2.09 3.52 3.52 3.46 3.46 3.46 3.46 3.46 2.20 2.20 2.20

DECISION NO. NY81-3030 - (CONT'D)		DECISION NO. NY81-3030 - (CONT'D)		DECISION NO. NY81-3030 - (CONT'D)	
Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
LABORERS, FREE AIR TUNNEL		Yorkshire, East Otto & Machias		Yorkshire, East Otto & Machias	
Steel erectors, pile-drivers, riggers		Base	5%+3.40	Base	3.54
Blasters, cement finishers, ironmen, miners, heading driller	14.095	371	"	35' in depth or 35' from road level	3.54
powder, monkey	13.845			Steel, tank, towers, stacks, flag poles, bosun chair, radio & TV towers	16.765
Side or roofbolt driller	13.445			Brush	3.54
conveyor men, block layers, rod men, caulkers, miners helper, track men, nippers, burners, derral men, electrical cable men, hosemen, groumen, gravel men, bottom bell, form workers, movers, shaft men	3.71			Structural Steel, Bridge, Tanks and Stacks	15.10
Top Bell	3.71			Spray, Steam Cleaning, Sandblasting & Toxic Coatings	14.85
LABORERS, UTILITY				Swing Scaffold, Bosun Chair, Paperhangers, Taping	2.04
CLASS A	12.595			Cattaraugus County (Remainder of County)	12.15
CLASS B	12.795			Brush	2.04
CLASS C	12.995			Roller	2.04
CLASS D	13.195			Cattaraugus County (Remainder of County)	10.95
LINE CONSTRUCTION				Steel above 20' Ladder or Scaffold over 30' high, Spray, Wall covering Hanging	2.16
Electrical Overhead & Underground Distribution Work				BRIDGES	2.16
Journeyman Lineman & Technician	12.00			PLUMBERS & STEAMFITTERS	1.90
Cable Splicer	16.00			Cattaraugus County (Remainder of County) & Erie County	2.74
Groundman Digging Machine Operator, Dynamite Man	10.80			Roofers	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.60			Erie County	
Groundman Truck Driver (Tractor Trailer)	10.20			Composition, damp, waterproofers, steep roofers & siders	2.71
Driver Mechanic, Groundman - Experienced	9.00			Slate, tile, asbestos, & precast tile roofers	2.71
				SPRINKLER FITTERS:	
				Chautauqua County and Cattaraugus County	2.83
				Erie County	4.81
				STEAMFITTERS: Erie Co.	5.10

MODIFICATION PAGE 6

DECISION NO. MO81-4055 - Mod. #2 746 FR 35884 dated July 10, 1981)	Basic Hourly Rates	Fringe Benefits
<u>Pulaski County, Missouri</u>		
<u>CHANGE</u>		
<u>PAINTERS:</u>		
Brush & Roller	\$11.75	2.20
taping, paperhanging and floor work	12.25	2.20
Spray, structural steel & sandblasting	13.00	2.20
BRICKLAYERS, Stonemasons & Tile Layers	13.90	.35
PIPEFITTERS	16.85	4.875
SHEET METAL WORKERS	15.16	3.35+ 3¢
	15.405	3.35
<u>PLUMBERS</u>		
TRUCK DRIVERS:		
Group 1	11.35	1.75
Group 2	11.75	1.75
Group 3	11.82	1.75
Group 4	11.87	1.75
Group 5	12.02	1.75
Group 6	12.85	1.75
<u>TRUCK DRIVERS:</u>		
Ft. Leonard Wood Only:		
Group 1	12.35	1.75
Group 2	12.50	1.75
Group 3	12.57	1.75
Group 4	12.62	1.75
Group 5	12.77	1.75
Group 6	13.10	1.75
<u>CARPENTERS:</u>		
Projects under \$350,000.00	14.36	1.67
Projects \$350,000.00 and over	14.86	1.67

MODIFICATION PAGE 5

DECISION NO. OR82-5100 - MOD #8 (47 FR 10954 - March 12, 1982) Statewide Oregon	Basic Hourly Rates	Pringe Benefits
CHANGE: ELECTRICIANS (Area 2): Electricians Cable Splicers IRONWORKERS: Structural, Ornamental, Reinforcing, Rrigging; Fence Erectors; Signal Men PLUMBERS: Area 2 Area 7	\$20.39 21.41 18.04 19.43 21.19	3.53-3.8 3.53-3.8 3.80 6.98 3.10
DECISION NO PASL-3027 MOD. NO. 7 (46 FR 37212 - July 17, 1981) Franklin County, Pa.		
CHANGE: Carpenters LINEN CONSTRUCTION: Linemen Winch truck operator Groundmen	\$13.80 14.25 9.98 8.55	25% 60+ 3-3/8% 60+ 3-3/8% 60+ 3-3/8%
DECISION NO. PASL-3029 MOD. NO. 5 (46 FR 35891 - July 10, 1981) Blair County, Pennsylvania		
CHANGE: Carpenters Bricklayers Stonemasons Electricians Ironworkers: Structural Reinforcing Painters Sheet Metal Workers	13.80 12.85 12.85 18.80 14.67 14.67 12.34 15.01	25% 2.45 2.45 2.85+ 3% 2.93 2.93 3.02 3.04

SUPERSEDES DECISION

STATE: ALABAMA

COUNTIES: CALHOUN, ETOWAH, ST. CLAIR, SHELBY, TALLADEGA, TUSCALOOSA, & WALKER

DECISION NO.: AL82-1034
 Supersedes Decision No.: AL81-1034 dated December 30, 1980 in 45 FR 86189.
 DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

Basic Hourly Rates	Fringe Benefits	PEO's continued:	Basic Hourly Rates	Fringe Benefits
\$ 5.75	1.36	BRICKLAYERS	\$ 4.10	
6.84		CARPENTERS	3.75	
6.19		CONCRETE FINISHERS		
3.75		Hoist (2 drums or 2 cages or more)	4.50	
12.05		Hoist (1 drum)	4.25	
		Mechanics	7.19	
7.79		Motor Patrol	7.00	
6.49		Oilier & Greaseman	5.43	
		Paving Subgraders	4.25	
4.00		Pumps	7.00	
5.65		Pipelayers	4.25	
4.71		Powdermen & Blasters	4.50	
4.10		Saw	4.74	
5.50		Side rail or Form Setters	6.35	
3.50		Unskilled	4.25	
5.00		Wagon Drill	4.25	
6.10		PAINTERS		
6.00		PILEDRIVERS		
		POWER EQUIPMENT OPERATORS:		
5.40		Aggregate Spreader	4.50	
3.75		Air Compressor	5.00	
6.41		Asphalt Distributor		
7.45		Asphalt Spreader	4.50	
		Asphalt Mixer & Pug Mill		
4.87		Asphalt Plant	5.75	
4.25		Asphalt Plant Driers	4.25	
6.46		Bulldozers		
4.25		Bull Floats	3.75	
		Concrete Mixer (3 bags & under)	3.75	
4.25		Concrete Mixer (over 3 bags)		
4.75		Concrete Paving Machine	4.50	
6.35		Concrete Paving Finishing Machine		
6.35		Concrete Paving Spreader		
		Cranes, Clamshells, Backhoes, Derricks, Draglines, or Shovels		
6.55		Conveyors		
4.25		Crusher & Screening Plant		
4.50		Drilling Machine		
5.74		Elevating Graders, Gradalls or Trenching		
5.50				

SUPERSEDES DECISION

STATE: ALABAMA

COUNTY: JEFFERSON

DECISION NO.: AL82-1035
 Supersedes Decision No.: AL81-1131 dated December 30, 1980 in 45 FR 86188.
 DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

Basic Hourly Rates	Fringe Benefits	PEO's continued:	Basic Hourly Rates	Fringe Benefits
\$ 5.75		BRICKLAYERS	\$ 5.75	
6.95		CARPENTERS	6.95	
6.42		CONCRETE FINISHERS	6.42	
4.25		CONCRETE SAW	4.25	
12.05	1.36	ELECTRICIANS	12.05	1.36
		IRONWORKERS:		
13.07		Structural	13.07	
10.45		Reinforcing	10.45	
		LABORERS:		
4.10		Air Tool Operators	4.10	
5.35		Asphalt Rakers	5.35	
4.92		Concrete Laborers	4.92	
4.10		Pipelayers	4.10	
5.50		Powdermen & Blasters	5.50	
4.25		Saw	4.25	
5.50		Side rail or Form Setters	5.50	
4.00		Unskilled	4.00	
5.00		Wagon Drill	5.00	
6.35		PAINTERS	6.35	
6.50		PILEDRIVERS	6.50	
		POWER EQUIPMENT OPERATORS:		
5.40		Aggregate Spreader	5.40	
4.25		Air Compressor	4.25	
6.81		Asphalt Distributor	6.81	
7.16		Asphalt Spreader	7.16	
		Asphalt Mixer & Pug Mills		
4.87		Asphalt Plant	4.87	
4.25		Asphalt Plant Driers	4.25	
6.50		Bulldozer	6.50	
4.25		Bull Floats	4.25	
		Concrete Mixers (3' bags & under)		
4.25		Concrete Mixers (over 3 bags)	4.25	
4.75		Concrete Paving Machine	4.75	
6.35		Concrete Paving Finishing Machine	6.35	
6.35		Concrete Paving Spreaders	6.35	
		Cranes, Clamshells, Backhoes, Derricks, Dragline or Shovels		
6.55		Conveyors	6.55	
4.25		Crusher & Screening Plants	4.25	
4.50		Drilling Machines	4.50	
5.74		Elevating Graders, Gradalls, or Trenching	5.74	
7.00		Firemen	7.00	
4.10		Form Graders	4.10	
4.25			4.25	

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. AL82-1037
PAGE TWO

Basic Hourly Rates	Fringe Benefits
\$ 3.75	
3.75	
4.50	
4.50	

TRUCK DRIVERS:

Under 1½ tons
Single Rear Axle
Multi-Rear Axle or Heavy
Duty, Off-Road, Single
Axle

Winch truck & A-Frame
WELDERS-Receive rate
prescribed for craft to
which it is incidental

Unlisted classifications
needed for work not included
within the scope of this
classification may be
added only after award as
provided in the labor
standards contract clauses
(29 CFR, 5.5(a)(1)(ii)).

SUPERSEDES DECISION

COUNTIES: *SEE BELOW

DATE: DATE OF PUBLICATION
AL81-1133 dated December 30, 1980 in 45 FR 86190.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction, bascule, suspension and spandrel arch bridges) bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

*COUNTIES: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clark, Clay, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Cleburne, Dale, Dallas, DeKalb, Elmore, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Sumter, Tallapoosa, Washington, Wilcox, & Winston.

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
\$ 5.75		PEO's continued:	
6.25		Concrete Paving Spreader	\$ 6.35
5.91		Cranes, Clamshells, Backhoe,	
3.75		Derricks, Draglines, or	
7.25		Shovels	6.55
7.79		Conveyors	4.25
6.49		Crusher & Screening Plant	4.50
4.00		Drilling Machine	5.74
4.75		Elevating Graders, Gradalls,	
4.71		or Trenching	5.50
4.10		Firemen	4.10
5.50		Form Graders	3.75
3.75		Hoist (2 drum or 2 cages	
4.25		or more)	4.50
3.50		Hoist (1 drum)	4.25
5.00		Mechanics	7.00
6.10		Motor Patrols	6.75
6.00		Oilers & Greasemen	5.64
5.29		Paving Subgraders	4.25
3.75		Piledrivers	6.25
5.88		Pumps	4.25
6.53		Pumpcretes	4.50
4.87		Roller (self-propelled)	4.89
4.25		Roller (self-propelled, on	
6.00		asphalt bases & pavements)	6.35
4.25		Scale Operators	4.25
4.25		Scalmen	4.25
4.25		Scrapers	6.00
4.25		Seeding & Mulching Machine	4.50
4.25		Striping Machine (paint)	5.00
4.25		Tractors & Loaders (farm	
4.25		rubber tired)	4.25
4.75		Tractors & Loaders (80 h.p.	
6.35		or less, draw-bar	
6.35		capacity)	4.50
		Tractors & Loaders (over 80	
		h.p.)	5.08

BRICKLAYERS

CARPENTERS

CONCRETE FINISHERS

CONCRETE SAW

ELECTRICIANS

IRONWORKERS:

Structural

Reinforcing

LABORERS:

Air Tool Operators

Asphalt Rakers

Concrete Laborers

Pipelayers

Powdermen & Blasters

Saw

Side Rail or Form Setters

Unskilled

Wagon Drill

PAINTERS

PAVEDRIVERS

POWER EQUIPMENT OPERATORS:

Aggregate Spreader Oper.

Air Compressors

Asphalt Distributor

Asphalt Spreader

Asphalt Mixer, Pug Mills

& Batch Plants

Asphalt Plant Drivers

Bulldozer

Bull Floats

Concrete Mixer (3 bags &

under)

Concrete Mixer (over 3

bags)

Concrete Paving Machine

Concrete Paving Finish-

ing Machine

SUPERSEDES DECISION

STATE: ALABAMA

DECISION NO.: AL82-1036

COUNTY: MOBILE

DATE: DATE OF PUBLICATION

SUPERSEDES DECISION NO.: AL81-1134 dated December 30, 1980 in 45 FR 86191.
 DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

Basic Hourly Rates	Fringe Benefits
BRICKLAYERS \$ 5.75	
CARPENTERS 6.50	
CONCRETE FINISHERS 6.10	
CONCRETE SAW 4.25	
ELECTRICIANS 12.05	1.36
IRONWORKERS: Reinforcing 8.00	
Structural 8.50	
LABORERS: Air Tool Operators 4.10	
Asphalt Rakers 4.33	
Concrete Laborers 4.92	
Pipelayers 4.10	
Powdermen & Blasters 5.50	
Saw 4.25	
Side Rail & Form Setters 5.50	
Unskilled 4.00	
Wagon Drill 5.00	
PAINTERS 6.35	
PILEDRIVERS: POWER EQUIPMENT OPERATORS: 7.00	
Asphalt Spreaders 7.00	
Air Compressor 4.25	
Asphalt Distributor 5.94	
Asphalt Spreaders & Pug 7.00	
Mixes & Batch Plants 4.87	
Asphalt Plant Drivers 4.25	
Bulldozers 6.00	
Bull Floats 4.25	
Concrete Mixer (3 bags & under) 4.25	
Concrete Mixer (over 3 bags) 4.75	
Concrete Paving Machine 6.35	
Concrete Paving Finish- ing Machine 6.35	
Crane, Clamshells, Backhoe Derricks, Draglines, or Shovels. 7.00	
Conveyors 4.25	
Crusher & Screening Plants 4.50	
Drilling Machine 5.74	
Elevating Graders, Gradalls or Trenching 6.00	
Fireman 4.10	
Form Graders 4.25	
Hoist (2 drums or 2 cages or more) 4.50	

SUPERSEDES DECISION

STATE: ILLINOIS

DECISION NUMBER: IL82-2038

COUNTIES: *SEE BELOW

DATE: Date of Publication

SUPERSEDES DECISION NOS. IL79-2078, dated September 21, 1979 in 44 FR 54847
 and IL79-2080, dated September 14, 1979 in 44 FR 53654

DESCRIPTION OF WORK: Heavy & Highway Construction Projects
 *Alexander, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Wayne, White, & Williamson

CARPENTERS; PILEDRIVER-

Basic Hourly Rates	Fringe Benefits
Alexander, Franklin, Gal- latin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Union & Williamson Cos. \$13.95	2.00
Clay, Edwards, Effingham, Fayette, Hamilton, Jas- per, Lawrence, Marion (Salem & Vic.), Richland, Wayne, & White Cos.: CARPENTERS: Piledrivermen 13.52	1.83
Jefferson & Saline Cos.: 14.02	1.83
Carpenters 13.67	1.68
Piledrivermen 14.17	1.68
Marion (Centralia & Vic.) Co.: 13.32	2.03
Carpenters 13.82	2.03
Piledrivermen 14.935	2.05
Wabash Co.: 13.36	1.99
Carpenters 13.86	1.99
Piledrivermen CEMENT MASONS: Alexander, Franklin, Gal- latin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, & Will- iamson Cos. 14.10	.75
Clay, Edwards, Effingham, Fayette (except N. part), Hamilton, Jasper, Jefferson, Marion, Rich- land, Wayne, & White Cos. 14.60	.50
Crawford (N. & W. of Co.) Co. 13.00	1.60
Crawford (S. & W. of Co.) Co. 13.85	.75
Lawrence, & Wabash Cos. Fayette (N. part) Co. ELECTRICIANS: Crawford, Jasper, Law- rence, & Richland Cos. 17.00	2.17
Effingham (Banner, Bis- hop, Douglas, Liberty, Lucas, Moccasin, St.	

SUPERSEDES DECISION

STATE: ILLINOIS

DECISION NUMBER: IL79-2078

COUNTIES: *SEE BELOW

DATE: Date of Publication

SUPERSEDES DECISION NOS. IL79-2078, dated September 21, 1979 in 44 FR 54847
 and IL79-2080, dated September 14, 1979 in 44 FR 53654

DESCRIPTION OF WORK: Heavy & Highway Construction Projects
 *Alexander, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Wayne, White, & Williamson

CARPENTERS; PILEDRIVER-

Basic Hourly Rates	Fringe Benefits
Alexander, Franklin, Gal- latin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Union & Williamson Cos. \$13.95	2.00
Clay, Edwards, Effingham, Fayette, Hamilton, Jas- per, Lawrence, Marion (Salem & Vic.), Richland, Wayne, & White Cos.: CARPENTERS: Piledrivermen 13.52	1.83
Jefferson & Saline Cos.: 14.02	1.83
Carpenters 13.67	1.68
Piledrivermen 14.17	1.68
Marion (Centralia & Vic.) Co.: 13.32	2.03
Carpenters 13.82	2.03
Piledrivermen 14.935	2.05
Wabash Co.: 13.36	1.99
Carpenters 13.86	1.99
Piledrivermen CEMENT MASONS: Alexander, Franklin, Gal- latin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, & Will- iamson Cos. 14.10	.75
Clay, Edwards, Effingham, Fayette (except N. part), Hamilton, Jasper, Jefferson, Marion, Rich- land, Wayne, & White Cos. 14.60	.50
Crawford (N. & W. of Co.) Co. 13.00	1.60
Crawford (S. & W. of Co.) Co. 13.85	.75
Lawrence, & Wabash Cos. Fayette (N. part) Co. ELECTRICIANS: Crawford, Jasper, Law- rence, & Richland Cos. 17.00	2.17
Effingham (Banner, Bis- hop, Douglas, Liberty, Lucas, Moccasin, St.	

SUPERSEDES DECISION

STATE: ALABAMA

DECISION NO.: AL82-1036

COUNTY: MOBILE

DATE: DATE OF PUBLICATION

SUPERSEDES DECISION NO.: AL81-1134 dated December 30, 1980 in 45 FR 86191.
 DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

Basic Hourly Rates	Fringe Benefits
BRICKLAYERS \$ 5.75	
CARPENTERS 6.50	
CONCRETE FINISHERS 6.10	
CONCRETE SAW 4.25	
ELECTRICIANS 12.05	1.36
IRONWORKERS: Reinforcing 8.00	
Structural 8.50	
LABORERS: Air Tool Operators 4.10	
Asphalt Rakers 4.33	
Concrete Laborers 4.92	
Pipelayers 4.10	
Powdermen & Blasters 5.50	
Saw 4.25	
Side Rail & Form Setters 5.50	
Unskilled 4.00	
Wagon Drill 5.00	
PAINTERS 6.35	
PILEDRIVERS: POWER EQUIPMENT OPERATORS: 7.00	
Asphalt Spreaders 7.00	
Air Compressor 4.25	
Asphalt Distributor 5.94	
Asphalt Spreaders & Pug 7.00	
Mixes & Batch Plants 4.87	
Asphalt Plant Drivers 4.25	
Bulldozers 6.00	
Bull Floats 4.25	
Concrete Mixer (3 bags & under) 4.25	
Concrete Mixer (over 3 bags) 4.75	
Concrete Paving Machine 6.35	
Concrete Paving Finish- ing Machine 6.35	
Crane, Clamshells, Backhoe Derricks, Draglines, or Shovels. 7.00	
Conveyors 4.25	
Crusher & Screening Plants 4.50	
Drilling Machine 5.74	
Elevating Graders, Gradalls or Trenching 6.00	
Fireman 4.10	
Form Graders 4.25	
Hoist (2 drums or 2 cages or more) 4.50	

Basic Hourly Rates	Fringe Benefits
11.60	.80
12.50	.80
13.65	.80
14.20	.80
14.65	.80
14.80	.80
11.75	
12.25	
11.55	
12.65	
12.40	
13.40	
14.80	2.085
13.40	2.085
13.10	2.085
12.45	2.085
11.85	2.085
14.95	1.58
14.85	1.58
14.65	1.58
9.25	1.58

DECISION NO. 1502-2038	LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
	Class 4	14.60	1.70	Clay, Edwards, Hamilton, Jefferson, Marion (excl. Salem city limits), & Wayne Cos.:	10.25
	Highway Construction:			Commercial Brush	10.50
	Class 1	13.20	1.70	Industrial Brush	11.00
	Class 2	13.30	1.70	Bridges; Sandblasting & Spray	11.00
	Class 3	13.45	1.70	Crawford, Effingham, Jasper, Lawrence, Rich-land, & Wabash Cos.:	14.30
	Class 4	13.70	1.70	Brush up to 30 ft.	15.10
	Class 5	14.725	1.70	Brush over 30 ft.	15.15
	Randolph (Sparta & Vic.) Co.:			Roller up to 30 ft.	15.95
	Heavy Construction:			Roller over 30 ft.	15.80
	Class 1	13.60	1.20	Sandblasting up to 30 ft.	1.00
	Class 2	13.85	1.20	Sandblasting over 30 ft.	1.00
	Class 3	14.10	1.20	Spray up to 30 ft.	1.00
	Class 4	14.20	1.20	Spray over 30 ft.	1.00
	Class 5	15.225	1.20	Fayette Co.:	1.00
	Remaining Counties	12.05	.935	Commercial Brush	14.72
	LINE CONSTRUCTION:			Commercial Spray & Blast	1.30
	Fayette (Portion N. of Avena) Co.:	17.16	1.74	Industrial Brush	15.72
	Linenen			Industrial Spray & Blast	14.97
	Groundman Equipment			Bridges	1.30
	Operator Class 1	16.01	1.65	Franklin Co.:	1.30
	Groundman Truck Driver w/Winch	12.16	1.36	Commercial Brush	9.50
	Groundman Truck Driver w/o Winch	11.45	1.31	Commercial Sandblast & Spray	10.50
	Groundman	10.91	1.27	Industrial Brush	11.50
	Remaining Cos.:			Industrial Sandblast & Spray	12.50
	Linenen	15.80	2.58	Jackson, Perry, & Randolph Cos.:	
	Groundman Equipment			Commercial:	
	Operator Class 1	13.51	2.27	Brush	12.70
	Groundman Equipment	12.10	2.08	Epoxy; Sandblast; & Spray	13.70
	Groundman	10.09	1.81	Steel	13.20
	PAINTERS:			Industrial:	14.45
	Alexander, Johnson, & Pulsaski Cos.:			Brush	14.45
	Commercial Brush (Old)	11.67		Epoxy; Sandblast; & Spray	15.45
	Commercial Brush (New)	13.35		Steel	14.95
	Commercial Spray & Sandblast	12.17		Industrial:	10.00
	Industrial Brush	14.51		Brush	
	Industrial Spray & Sandblast	15.01		Epoxy; Sandblast; & Spray	
	Dams; Power Tools; Tanks; & High Line Towers	15.42		Steel	
	Bridges	17.51		Marion (Salem City Limits) Co.	

DECISION NO. IL82-2038

CLASSIFICATION DEFINITIONS - Power Equipment operators (Cont'd)

Class B - Air Compressor w/Valve driving piling, Two Air Compressors (220 cu. ft. capacity or over), Two Airtrack Drills, Airtrack Drill w/Compressor, Automatic Bins or Scales w/Compressor or Generator, Pipeline Boring Machine, Bulk Cement Plant w/Separate Compressor, Power Operated Bull Float, Hydra-lift w/Single Motor, Straw Mulcher Blower w/Spout, Self-Propelled Roller/Compactor, Back-End Man on Bituminous Surfacing Machine

Class C - Boom or Winch Truck, Two Conveyors, Self-Propelled Concrete Saw, Self-Propelled Vibrator, any Type Tractor pulling any type Roller or Disc, Rubber Tired Farm Type Tractor w/Blade/Bulldozer/Auger/Hi-lift & yd. or less, Elevator Operator, Self Propelled Chip Spreader, Form Grader, Truck Crane Oiler

Class D - Air-Track Drill (one), Belt Drag Machine, Power Broom, Mechanical Plaster Applicator, Trac-Air, Air Compressor (220 cu. ft. or over) One, Air Compressor (under 220 cu. ft.) four, Automatic Bin, Bulk Cement Plant w/Built-in Compressor running off same Motor or Electric Motor, Fireman, Self-Propelled Form Tamber, Light Plants (4), Welding Machine (4), Pumps (4), or Combination of four (4) pumps, Light Plants, Welding Machines, Air-Compressors (under 220 cu. ft.), Mudjacks or Wood Chipper, Mixer - less than 21 cu. ft., Mortar Mixer w/skip or pump, Pipeline Tract Jack

Class E - One Air Compressor (under 220 cu. ft.), One Conveyor, One Motor Driven Heater, One Light Plant, One Pump, One Welding Machine, One Ullmac or Equal Spreader, Conveyor Operator on Self-Propelled Chip Spreader Oilers

CLASSIFICATION DEFINITIONS - Power Equipment Operators

Clay, Crawford, Edwards, Effingham, Jasper, Lawrence, Richland, Wabash, & Wayne Cos.

Class I - Master Mechanic

Class II - Utility Operator

Class III - Power Cranes, Draglines, Derricks, Shovels, Grapplers, Mechanics, Concrete Mixers with Skip, Tournamixers, Two Drum Machine, One Drum Hoists with Tower or Boom, Cableways, Tower Machines, Motor Patrol, Boom Tractor, Boom or Winch Truck, Winch or Hydraulic Boom Truck, Truck Crane, Tournapull, Tractor Operating Scoops, Bulldozer, Push Tractor, Asphalt Planer, Finishing Machine on Asphalt, Large Rollers on Earth, Rollers on Asphalt Mix, Ross Carriers or similar Machine, Gravel Processing Machine, Asphalt Plant Engineer, paver Operator, Farm Tractor w/half yard Bucket and/or Backhoe Attachment, Dredging Equipment or Dredge Engineer or Dredge Operator, Central Mix Plant Engineer, CMI or similar type machine, Concrete pump, Truck or Skid Mounted, Tower-Crane, Engine or Rock Crusher Plant, Concrete plant Engineer, Ditching Machine with dual attachment, Tractor Mounted Loaders, Cherry Picker, Hydro Crane, Standard or Linkway Locomotives, Scoopmobiles, Euclid Loader, Soil Cement Machine, Back Filler, Elevating Machine, Power Bladder, Drilling Machines, incl. Well Testing, Caissons, Shaft or any similar type Drilling Machines, Motor Driven Paint Machine, Pipe Cleaning

DECISION NO. IL82-2038

CLASSIFICATION DEFINITIONS - Laborers - Randolph county

Heavy Construction

Class 1 - Unskilled

Class 2 - Workmen while Cutting & burning with a Torch; Men working on the Bottom of Sewer Trenches on the final Grading, laying or caulking of pre-formed sectional Sanitary or Storm Sewer Pipe, including Reinforced Concrete Tile, but not including Box Culverts, Tin Whistles or Multiple Culverts

Class 3 - Tenders to all Brick & Plaster Masons

Class 4 - Dynamite Men

Highway Construction

Class 1 - Laborers

Class 2 - Asphalt Raker; Weighman on Asphalt Platform

Class 3 - Men working on the Bottom of Sewer Trenches on the final grading, laying or caulking of preformed sectional Sanitary or Storm Sewer Pipe (including reinforced concrete tile but not including box culverts)

Class 4 - Brickmasons Tenders

Class 5 - Dynamite Men

CLASSIFICATION DEFINITIONS - Power Equipment Operators

Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White, & Williamson Counties

Class A - APSCO or equal Spreading machine, Backhoe, Boom or Winch Cat, Bituminous Mixplane Machine, Blacksmith, Bituminous Surfacing Machine, Bulldozer, Crane, Shovel, Dragline, Truck Crane, Pile Driver, Concrete Finishing Machine, Concrete Breaker, Concrete or Pumpcrete Pumps, Pinky or Standard Locomotives, Well or Caisson Drills, Elevating Grader, Fork Lifts, Flexplane, Grapple, Hi-Lift, Hoists, Guy-Derricks, Hyster, Mechanic, Motor Patrol, Mixers - 21 cu. ft. or over, Push Cats, Pulls, and Scrapers, Two Well Point Pumps, Pulverizer or Tiller, Pugmill, Rubber-Tired Farm Type Tractor with Bulldozer/Blade/Auger or Hi-Lift over 1/2 yd., Jersey Spreader, Tract Air used with drill or Hi-Lift, Trenching or Ditching Machines, Wood Chipper w/Tractor, Self-Propelled Roller w/Blade, Equipment Greaser, Self-Propelled Bump Grinder on Concrete Highway pavement

DECISION NO. IL82-2038

CLASSIFICATION DEFINITIONS (CONT'D)

Machine, Pipe Wrapping Machine, Pipe Bending Machine, Apasco Paver, Boring Machine, Head Equipment Greaser, Barber-Greene Loaders, Formless Paver, Well Point System, Concrete Spreader, Hydra Ax, Resco Concrete Saw, Marine Scoops, Brush Mulcher, Brush Burner, Mesh Placer, Tree Mover, Helicopter Crew (3), Piledriver - Skid or Crawler, Stump Remover, Root Rake, Tug Boat Operator, Refrigerating Machine, Freezing Operator, Chair Cart - Self-Propelled, Hydra-Seed-er, Straw Blower, Power Sub Grader, Bull Float, Finishing Machine, Self-Propelled Pavement Breaker (Backhoe Attached), Lull (or similar type machine), Two Air Compressors, Compressors hooked in Manifold, Overhead Crane, Chip Spreader, Mud Cat, Sull-Air

Class IV - Concrete Mixers without Skips, Rock Crusher, Ditching Machine under 6", Curbing Machine, One Drum Machines without Tower or Boom, Air Tugger, Self Propelled Concrete Saw, Machine Mounted Post Hole Digger, Two to Four Generators, Water Pumps, or Welding Machines, within 400 feet, Air Compressor 600 cu. ft. and under, Rollers on Aggregate and Seal Coat Surfaces, Fork Lift, Concrete and Blacktop Curb Machine, Farm Tractor with less than half yard Bucket, One Water pump, Oilers, Air Valves or Steam Valves, One Welding Machine, Truck Jack, Mud Jack, Gunite Machine, House Elevators when used for Hoisting Material, Engine Tenders, Fireman, Wagon Drill, Flex Plane, Conveyor, Siphons and Pulsometer, Fireman on Paint Pots, Tampers, Self-Propelled Power Broom, Stripping Operator on Trucks, Tampers, Self-Propelled Power Broom, Bulk Cement Machine (motor driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser, Deck Hands, Truck Crane, Oiler Driver, Cement Blimps, Form Grader, Temporary Heat, Throttle Valve, Farm Tractor

CLASSIFICATION DEFINITIONS - Power Equipment Operators:

Fayette, Jefferson, Marion, Perry and Randolph Counties

Group 1 - Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Operators, Plant Operators, Ditching Machines or Backfillers, Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 Drum or more, Hoists - 2 Drum or more, Hydraulic Backhoes, Ditching machines or Backfiller, Cherry Pickers, Overhead Cranes, Roller Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boat Ops., (25' & over), Motor Graders or Pushcats, Scoops or Tournapulls, Bulldozers, End Loaders or Fork-Lift, Power Blade or Paving Machines, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drill (other than derrick type) 1 drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2), Welding Machines (2)

DECISION NO. IL82-2038

CLASSIFICATION DEFINITIONS - Power Equipment Operators (Cont'd)

Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Fireman on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machine, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Ops., (under 25 ft. conveyors (1) Distribution Ops., On Trucks, Siphons or Jets (1) Winch Heads or Apparatuses (1), Light Plant (1) Mixers (under 2 bags)

Group II - Air Compressor (1), Water Pumps regardless of size (1) Welding Machine (1)

Group III - Fireman and Asphalt Spreader Oilers

Group IV - Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)

Group V - Oilers

Group VI
a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

CLASSIFICATION DEFINITIONS - Truck Drivers

Group I - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

Group II - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group III - 2, 3, or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group IV - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:

a. \$51.00 Per Week Per Employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 82-20431 Filed 7-29-82; 8:45 am]

BILLING CODE 4510-27-C

Registered Federal Land

Friday
July 30, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

**Pennsylvania; Conditional Approval of the
Permanent Program Submission and
Approval of the Abandoned Mine Land
Reclamation Plan Under the Surface
Mining Control and Reclamation Act of
1977; Final Rules**

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938****Conditional Approval of the Permanent Program Submission From the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial disapproval. The notice announcing the initial decision was published in the *Federal Register*, October 22, 1980 (45 FR 69970-69977). The purpose of the resubmission is to demonstrate the Commonwealth's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. This rule grants conditional approval of the Pennsylvania regulatory program.

After providing opportunities for public comment and conducting a thorough review of the complete program submission, the Secretary of the Interior has determined that the Pennsylvania program meets the requirements of SMCRA and the Federal permanent program regulations, except for the minor deficiencies discussed below under "SUPPLEMENTARY INFORMATION." Accordingly, the Secretary of the Interior has conditionally approved the Pennsylvania program.

A new Part 938 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective July 31, 1982. This conditional approval will terminate as specified in 30 CFR 938.11, unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 938.11, adopted below.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951

Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5361.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for addresses where copies of the Pennsylvania program and administrative record on the Pennsylvania program are available.

SUPPLEMENTARY INFORMATION:**Availability of Copies**

Copies of the Pennsylvania program with modifications and the administrative record on the Pennsylvania program, including the letter from the Pennsylvania Department of Environmental Resources agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during regular business hours at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 787-4686

Office of Surface Mining, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036

Office of Surface Mining, Room 5315, 1100 "L" St., NW., Washington, D.C. 20240; Telephone: (202) 343-7896

In addition, copies of the full text of the proposed program with modifications are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining, Wilkes Barre Office, 20 N. Pennsylvania Avenue, Room 3107, Wilkes Barre, PA 18701; Phone: (717) 823-0563

Department of Environmental Resources, Pittsburgh Regional Office, The Kossman Building, 100 Forbes Avenue, Pittsburgh, PA 15222; Phone: (412) 565-5023

Department of Environmental Resources, Williamsport Regional Office, 200 Pine Street, Williamsport, PA 17701; Phone: (717) 327-3636

Department of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335; Phone: (814) 724-8557

Department of Environmental Resources, Pottsville District Office, Motor Contracts Building, 108 S. Claude A Lord Blvd., Pottsville, PA 17901; Phone: (717) 622-8181

Department of Environmental Resources, Hawk Run District Office, Hawk Run Water Treatment Plant, Hawk Run, PA 16840; Phone: (814) 342-5399

Department of Environmental Resources, Ebensburg District Office, The Prave Building, 122 S. Center Street, Ebensburg, PA 15931; Phone: (814) 472-6344

Office of Surface Mining, Johnstown Office, Penn Traffic Bldg., 3rd Floor, 319 Washington Street, Johnstown, PA 15901; Phone: (814) 533-4223

Department of Environmental Resources, Wilkes Barre/Kingston Regional Office, 90 East Union St., 2nd Floor, Wilkes Barre, PA 18701; Phone: (717) 826-2511

Department of Environmental Resources, Harrisburg Regional Office, 407 South Cameron Street, Harrisburg, PA 17101; Phone: (717) 783-2818

Department of Environmental Resources, Norristown Regional Office, 1875 New Hope Street, Norristown, PA 19401; Phone: (215) 631-2400

Department of Environmental Resources, Knox District Office, White Memorial Bldg., Knox, PA 16232; Phone: (814) 797-1191

Department of Environmental Resources, Greensburg District Office, Armbrust Professional Bldg., R.D. #2, Greensburg, PA 15601; Phone: (412) 925-8115

A. Background

The general background on the permanent program, the state program approval process, and the Pennsylvania program submission were discussed in the *Federal Register*, October 22, 1980 (45 FR 69971-69974). Readers should refer to the October 22, 1980, notice for details on this background information. Subsequent to that notice, amendments to the Federal regulations were published on January 23, 1981 (46 FR 7894 and 7906); June 30, 1981 (46 FR 33980); July 17, 1981 (46 FR 37232); August 17, 1981, (46 FR 41702-41706); September 29, 1981 (46 FR 47720); October 8, 1981 (46 FR 50018-50019); October 28, 1981 (46 FR 53376); November 2, 1981 (46 FR 54495); and June 17, 1982 (47 FR 26356). An interpretive rule was published November 7, 1980 (45 FR 73945-73946). Additional regulations were suspended pending further rulemaking on August 19, 1981 (46 FR 42063).

Also, in the October 22, 1980 *Federal Register* notice, the Secretary announced his disapproval of the Pennsylvania program. This decision was made primarily because the Pennsylvania program did not have fully enacted laws and regulations before the 104th day after program submission, as required by 30 CFR 732.11(d).

B. Background on the Pennsylvania Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the Commonwealth of Pennsylvania had 60 days from the date of publication of the Secretary's initial decision in which to resubmit a revised program for consideration. Pennsylvania was to resubmit its revised program for consideration on December 22, 1980. On November 26, 1980, Commonwealth Court Judge James C. Crumlish issued a preliminary injunction enjoining the Pennsylvania Department of Environmental Resources (DER) from submitting a program to achieve primacy under SMCRA (In re: *Keystone Bituminous Coal vs DER and Pennsylvania Coal Mining Association vs DER*) (Administrative Record No. PA 257). Judge Crumlish ruled that the Department of Environmental Resources was preliminarily enjoined and restrained from submitting a regulatory program to OSM until such time that judicial challenges to SMCRA and the regulations promulgated thereunder were finally adjudicated, but in no event longer than one year in accordance with Section 503 of SMCRA.

On December 19, 1980, the Department of Environmental Resources notified the Secretary of the Interior of the injunction and that Pennsylvania would not be resubmitting a program on December 22, 1980 because of the injunction. (Administrative Record No. PA 257).

On November 26, 1981, the preliminary injunction prohibiting the Department of Environmental Resources from resubmitting a regulatory program to OSM expired. An announcement was published in the *Federal Register* on November 2, 1981 (46 FR 54495) of the Secretary's policy to allow any state subject to an injunction prohibiting resubmission of a program sixty days following expiration of the injunction in which to resubmit its program. Pennsylvania resubmitted its program to OSM on January 25, 1982 (Administrative Record No. PA 292).

Announcement of Pennsylvania's resubmission was made in two newspapers of general circulation within the Commonwealth of Pennsylvania and published in the *Federal Register* on January 29, 1982 (47 FR 4318-4320). That *Federal Register* notice also announced a public comment period extending to March 3, 1982, and a public hearing which was held in Harrisburg, Pennsylvania, on February 25, 1982. On April 9, 1982, and May 5, 1982, Pennsylvania submitted to OSM revisions to its resubmission of January

25, 1982, (Administrative Record Nos. PA 321 and 336). To allow the public sufficient time to review and comment on the revisions to the Pennsylvania program, notices acknowledging receipt of the revisions and reopening the public comment period until May 10, 1982, and later extending the comment period until May 21, 1982, were published in the *Federal Register* on April 9, 1982, (47 FR 15368) and May 7, 1982, respectively (47 FR 19721-19722).

Public disclosure of comments by Federal agencies was made on June 11, 1982, in the *Federal Register* (47 FR 25383-25384).

The Regional Director completed his program review on June 18, 1982, and forwarded the public hearing transcripts, written presentation, and copies of all comments to the Director of OSM together with a recommendation that the program be conditionally approved.

On July 7, 1982, the Environmental Protection Agency transmitted its written concurrence on the Pennsylvania program (Administrative Record No. PA 375).

On June 29, 1982, the Director recommended to the Secretary that the Pennsylvania program be approved conditionally.

The basis and purpose statement for the Secretary's decision to conditionally approve Pennsylvania's program consists of this notice and the October 22, 1980, *Federal Register* notice announcing the Secretary's initial decision. Throughout the remainder of this notice, "Pennsylvania program" or "Pennsylvania submission" means the resubmission (Administrative Record No. PA 292), as amended on April 9, 1982, (Administrative Record No. PA 321) and May 5, 1982, (Administrative Record No. PA 336) together with the initial submission of February 29, 1980, (Administrative Record No. PA 1) as amended on June 9, 1980, (Administrative Record No. PA 97). The terms "Pennsylvania surface mining laws" or "state surface mining laws" refer to the laws submitted by Pennsylvania as part of its resubmission. These laws consist of The Administrative Code of 1929 (Ad. Code), Coal Refuse Disposal Control Act (CRDCA), Surface Mining Conservation and Reclamation Act (PASMCR), The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) and The Clean Streams Law (TCSL). The term "Pennsylvania regulations" refers to Title 25 of the Pennsylvania Code, Chapters 86, 87, 88, 89 and 90, submitted by Pennsylvania as part of its program resubmission, and the amendments

adopted thereto on April 20, 1982. Citations to specific Pennsylvania regulations are denoted by the preface "PA."

The Secretary's findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

C. The Secretary's Findings

Finding 1

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted in subsequent Findings, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Pennsylvania in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This finding is based on the requirements of Section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). An analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 2

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted in subsequent Findings, sanctions for violations of Pennsylvania laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations and that these sanctions meet, except as noted in subsequent Findings, the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations and withholding of permits, and the issuance of cease-and-desist orders by the Department of Environmental Resources or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). An analysis of the issues underlying this finding is found in Findings 7, 18, 19 and 20, below.

Finding 3

The Secretary finds that the Department of Environmental Resources has demonstrated that it has sufficient administrative and technical personnel and funds to enable Pennsylvania to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

This finding is based on the requirements of Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)). An analysis of the issues underlying this finding is found in Finding 30, below.

Finding 4

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted below, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Pennsylvania.

This finding is based on the requirements of Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)). An analysis of the issues underlying this finding is found in Finding 14, below.

Finding 5

The Secretary finds that Pennsylvania has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA.

This finding is based on the requirements of Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). An analysis of the issues underlying this finding is found in Finding 21, below.

Finding 6

The Secretary finds that Pennsylvania has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations.

This finding is based on the requirements of Section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)). An analysis of the issues underlying this finding is found in Findings 13 and 14, below.

Finding 7

The Secretary finds that Pennsylvania has enacted regulations, except as noted in subsequent Findings, consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). An analysis of the issues underlying this finding is found in Findings 12, 13, 14, 17, 19 and 20, below.

Pennsylvania has developed and submitted with its program resubmission of January 25, 1982, and revisions thereto, regulations to implement Pennsylvania's surface mining laws. These regulations, for the most part, are being enacted as temporary rules concurrent with the decision announced in this notice. This action is consistent with the requirements of SMCRA in that Pennsylvania has the necessary authority to enforce a permanent

regulatory program at the time approval by the Secretary is effective.

In resubmitting its program, Pennsylvania submitted regulations which were adopted on December 20, 1980, and superseded portions of them in later resubmissions with amendments thereto (See Part B entitled "Background on the Pennsylvania Program" of this Federal Register notice). The amended regulations were adopted by the Pennsylvania Environmental Quality Board (EQB) on April 20, 1982, and will take effect upon program approval. In adopting these regulations, the EQB issued an order on April 20, 1982 (Administrative Record No. PA 336 p. 91) stating that any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980 (10 *Pa. Bull.* 4789). Those issues which were resolved through effectuating the EQB order are found at Findings 13.6, 13.7 and 14.11, below.

The Department of Environmental Resources submitted additional revised regulations to the EQB on June 15, 1982, which, if adopted, should resolve many of the concerns outlined herein regarding Pennsylvania's permanent program regulations. As discussed in Part F of this notice, the revised regulations are expected to be adopted as emergency rules by October 1982. Upon receiving program approval, Pennsylvania plans to initiate formal rulemaking on PA Chapters 86, 87, 88, 89, and 90. For the most part, this process is not expected to be completed before May 1983.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Pennsylvania program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)) and on the information contained in the Federal Register notice published June 11, 1982 (47 FR 25383-25384). This notice identified the Federal agencies from which comments were solicited, the agencies which responded and the offices of OSM and the Pennsylvania Department of Environmental Resources at which copies of the comments were made available.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Pennsylvania program being approved today and which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151-1175) and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

This finding is based on the requirements of Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)) and on the letter transmitted by the Administrator of EPA to the Secretary on July 7, 1982. A copy of this letter has been placed in the Pennsylvania Administrative Record (Administrative Record No. PA 375).

Finding 10

The Secretary, through the OSM Regional Director for Region I, held a public meeting in Indiana, Pennsylvania, on April 10, 1980, to discuss the Pennsylvania program submission and its completeness, held public hearings in Indiana and Harrisburg, Pennsylvania, on July 14 and 15, 1980, respectively, on the adequacy of the Pennsylvania program submission, and subsequently held a public hearing on February 25, 1982, in Harrisburg, on the resubmitted program.

This finding is based on the requirements of Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the Commonwealth of Pennsylvania has the legal authority and sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)). Analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 12

The Secretary finds that the Pennsylvania program provides, except as noted below, for carrying out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

This finding is made under the requirements of 30 CFR 732.15(a). Analysis of the issues underlying this finding is found throughout this Federal Register notice.

Finding 13

The Secretary finds that the Pennsylvania Department of

Environmental Resources (DER) has, except as noted below, the authority under Pennsylvania surface mining laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (Performance Standards) and the Pennsylvania program includes provisions adequate to do so, with the exceptions noted below. This finding is made under the requirements of 30 CFR 732.15(b)(1).

Pennsylvania incorporates provisions corresponding to Sections 515 and 516 of SMCRA and provisions of Subchapter K of 30 CFR Chapter VII in several sections of CRDCA, PASMCR and TCSL and throughout the Pennsylvania regulations, Chapters 87, 88, 89 and 90 of Title 25 Pennsylvania Code.

Discussion of significant issues raised during the review of the Pennsylvania environmental performance standards follows.

13.1 PA 87.112(b) and PA 90.112(b) do not provide that impoundments greater than 20 feet in height or which have a storage capacity of equal to or greater than 20 acre-feet comply with the spillway design and factor of safety criteria contained in 30 CFR 816.46(q) (1) and (2). The requirement that larger dams have the capability to pass larger storms and attain a demonstrated level of stability beyond that of smaller structures is a common engineering and regulatory practice. Pennsylvania has a dam regulatory process that provides design standards for such structures. The Federal regulations contain these standards to establish a greater degree of protection of public health, safety and environment where the release of significant volumes of water could result from catastrophic failure of larger impoundments. Approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment to provide special requirements for impoundments which are no less effective than 30 CFR 816.46(q) (1) and (2).

13.2 30 CFR 816.46(t) and 816.49(f) require that all impoundments be examined for structural weakness, erosion, and other hazardous conditions by a qualified person every seven days in accordance with 30 CFR 77.216-3. Inspection of ponds not meeting the size criteria of MSHA regulations (30 CFR 77.216(a)) may be done quarterly with the approval of the regulatory authority. In addition, ponds meeting the MSHA size criteria must be routinely inspected by a qualified registered professional engineer or someone under his supervision. Reports of any inspections, monitoring and modifications must be

maintained as specified in 30 CFR 77.216-3. PA 87.112(b)(1) and PA 90.112(b)(1) only require inspection of sedimentation ponds during construction. Also, PA 87.111(a) and PA 90.111(a) incorporate the requirements of PA Chapter 105. PA 105.131 only requires that dams, meeting the classification designation "1" or "2" of PA Chapter 105 (higher risk dams), be inspected and certified annually by a registered engineer. Impoundments that are improperly constructed, poorly maintained or operated can pose potential or actual threats to public safety and the environment. Frequent inspection allows assessment of performance and provides for timely adjustments as necessary. Therefore, the Secretary finds that PA 87.111(a), 87.112(b)(1), 90.111(a) and 90.112(b)(1) are less effective than 30 CFR 816.46(t) and 816.49(f), in that inspections are limited to sedimentation ponds during construction and larger high risk structures after construction and in that the frequency of inspection is inconsistent with that established under 30 CFR 77.216-3. Consequently, approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment to provide for standards which are no less effective than the Federal requirements.

13.3 According to 30 CFR 816.49(a)(5), structures that can: (1) impound 20 acre-feet or more of water, sediment or slurry to an elevation of five feet or more above the upstream toe; or, (2) impound to an elevation of 20 feet or more above the upstream toe (MSHA 30 CFR 77.216(a)) must comply with the requirements contained in the U.S. Soil Conservation Service Technical Release 60 (TR-60), *Earth Dams and Reservoirs*, June 1976. Impoundments that do not meet the size criteria above must comply with the requirements contained in the U.S. Soil Conservation Service Practice Standard 378 (PS-378), *Ponds*, October 1978. Pennsylvania regulations, however, utilize a different set of dam size criteria to categorize requirements for large and small structures. For small dams, the Soil Conservation Service's "Pennsylvania PS-378" is referenced in PA 87.112(b) and 90.112(b). For large dams, PA 87.112(a) and 90.112(a) reference PA Chapter 105. PA Chapter 105 requires state-of-the-art design and construction. Pennsylvania stated in its Attorney General's opinion that the state-of-the-art requirement would be satisfied through adherence to a reference list of acceptable guidelines, including TR-60, *Design of Small Dams*, etc. The Secretary finds that this provision is no less effective than the

Federal rules in satisfying the requirements for large dams encompassed by PA 87.112(a) and PA 90.112(a). Inasmuch as Pennsylvania's categorization of large and small dams is less effective than the Federal counterparts, the Secretary further finds that the use of PA PS-378, other than as intended, is inappropriate, e.g. other than for low risk (SCS "class A") structures with height times storage products less than 3000, or structures 35 feet or less in height. Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of language in PA 87.112(b) and 90.112(b) of other program amendment to ensure that impoundments which meet MSHA criteria (30 CFR 77.216(a)) comply with the requirements of TR-60 in accordance with 30 CFR 816.49(a)(5).

13.4 30 CFR 816.49(h) requires that annual certification reports for ponds, dams and impoundments contain information on monitoring and instrumentation, design versus actual water levels periodically taken throughout the reporting period, existing storage capacity, the presence of fires, and any other aspects of the dam which might affect stability. Certification reports serve as notification to the regulatory authority that structures are performing as intended; that the permittee is properly maintaining the facility; that any problems which occur, or are likely to occur, are or have been addressed; and that a qualified professional has found conditions conforming with standard engineering practices. The Secretary finds that PA 87.112 and PA 90.112 contain no provisions requiring that the information discussed above be contained in the certification reports. Accordingly, approval of the Pennsylvania program is conditioned upon the adoption of requirements in its regulations or other program amendment which are no less effective than those in 30 CFR 816.49(h).

13.5 PA 87.143 is less effective than 30 CFR 816.102(b) by allowing alternatives to contouring and terracing where the land is proposed to be made suitable after mining and reclamation for industrial, commercial, agricultural, residential, recreational or public use. SMCRA does not specifically allow for alternatives to approximate original contour as proposed by Pennsylvania. Therefore, the Secretary finds that a variance provision to approximate original contour for non-steep slope areas is not inconsistent with the approximate original contour requirements of Section 515 of SMCRA. However, the provisions of Sections 515(e) (1) and (3) require complete

backfilling, elimination of the highwall, improvement of the watershed control of the area, and concurrence of appropriate land use planning agencies and surface owner(s) that the potential use of the affected land will constitute an equal or better economic or public use. PA 87.143 does not contain any similar requirements. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in PA 87.143 to reflect the requirements of Sections 515 (e)(1) and (e)(3) of SMCRA. (For a detailed discussion of the Section 515(e) variance to the approximate original contour requirements, see the preamble discussion of proposed rules for postmining land uses and variances from approximate original contour (47 FR 16153-16156, April 14, 1982)).

13.6 PA 89.51(d) only requires that underground mine operators mark the perimeter of all coal storage and preparation plant areas. 30 CFR 817.11(d) and Section 701(17) of SMCRA require that the person conducting underground mining clearly mark the perimeter of all areas affected by surface operations or facilities before mining initiates. If the perimeters of such areas change, the perimeter markers must be adjusted accordingly. Proper marking of perimeters is necessary in preventing equipment operators from inadvertently entering areas not authorized for disturbance. Therefore, the Secretary disapproves PA 89.51(d) regarding perimeter markers. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336), any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980 (10 Pa. Bull. 4789). The Secretary finds that the provisions of PA 89.72(d) of Pennsylvania's December 20, 1980 regulations are no less effective than 30 CFR 817.11(d) and thus requires no condition.

13.7 PA 89.65 does not prohibit the use of persistent pesticides on the area during underground mining and reclamation as set forth in 30 CFR 817.97(d)(7). Therefore, the Secretary disapproves PA 89.65 regarding the use of pesticides. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336) any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality

Board on December 20, 1980 (10 Pa. Bull. 4789). Since PA 89.105(d)(7) of Pennsylvania's December 20, 1980 regulations contain provisions no less effective than 30 CFR 817.97(d)(7), no condition is necessary.

13.8 PA 89.86(a)(1) only requires that an underground mining operator establish an effective and permanent vegetative cover, while Section 516(b)(6) of SMCRA and 30 CFR 817.111(a) require that an operator must establish a diverse vegetative cover, as well as an effective and permanent vegetative cover. A diverse vegetative cover is necessary to ensure that the failure of one species through drought or disease does not result in an elimination of all vegetation which would result in serious erosion. Approval of the Pennsylvania program is conditioned upon the issuance of regulations or program amendment to require the establishment of a diverse vegetative cover for underground mining operations which is no less effective than 30 CFR 817.111(a) and in accordance with Section 516(b)(6) of SMCRA.

Finding 14

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program includes, except as noted below, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (Permits). This finding is made under the requirements of 30 CFR 732.15(b)(2).

Pennsylvania incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in several sections of CRDCA, PASMCR, BMSLCA and TCSL and throughout the Pennsylvania regulations, Chapters 86, 87, 88, 89 and 90 of Title 25 Pennsylvania Code. Chapters III and IV of the program submission contain a discussion of the Commonwealth's system for permitting.

Discussion of significant issues raised during the review of the Pennsylvania permit provisions follows:

14.1 PA 90.11(a)(3) does not require a description of significant known archeological sites within the adjacent areas of a coal refuse permit area as set forth in 30 CFR 779.12 and in accordance with Section 507(b)(13) of SMCRA. Sections 102 and 522(e) of SMCRA and the National Historic Preservation Act protect cultural, historical and archeological features both on and off the permitted area. A description of the sites is necessary to ensure that the regulatory authority has enough information to determine whether

mining activities will comply with 30 CFR 761.11 and 786.19(e). Therefore, approval of Pennsylvania's program is conditioned upon the inclusion of additional language in its regulations or other program amendment which is no less effective than 30 CFR 779.12.

14.2 PA 88.30 does not require the permit application for anthracite mining operations to contain a description of historic land use, if the premining use of the land was changed within five years before the anticipated date of beginning the proposed mining operation as set forth in 30 CFR 779.22(a)(1) and in accordance Section 508(a)(2)(A) of SMCRA. This information is necessary to enable the regulatory authority to evaluate the applicant's plan to restore the affected area to the condition required by PA 88.133. If the premining land use has changed within five years preceding mining, the applicant is to describe the historic land use of the proposed mining area. However, in accordance with Federal law, the regulatory authority is given the opportunity to determine the appropriate period for information on historical use based on the nature of changes that have occurred and local conditions and trends. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its regulations or other amendments to its program requiring description of historic land use consistent with the Federal provisions cited above.

14.3 Section 529 of SMCRA applies all provisions of SMCRA to anthracite mining, except Sections 515, 516 and portions of Sections 509 and 519. All provisions of Sections 509 and 519 are applicable but for the specified bond limits and the period of revegetation responsibility. Using this standard of review, the Secretary has determined that anthracite mining is not exempt from all prime farmland provisions of SMCRA. Therefore, Pennsylvania must adopt prime farmland requirements of SMCRA for anthracite mining, except those provisions cited above. Specifically, PA 88.31 and PA 88.491 do not require the applicant to conduct a prime farmland investigation in accordance with 30 CFR 779.27, 783.27 and Section 507(b)(16) of SMCRA. Prime farmland procedures must be followed for all mining activities in order to ensure the protection of prime farmland. For surface mines, the entire permit area must be investigated; whereas for underground mines, only the area proposed to be affected by surface operations or facilities need be investigated. Accordingly, approval of

the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements.

14.4 PA 87.73 does not require that the contents of the general plan for ponds, impoundments, banks, dams and embankments associated with surface mining operations be "prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture", as does 30 CFR 780.25(a)(1)(i). This requirement originates from Section 507(b)(14) of SMCRA, which provides that only trained professionals may develop adequate plans for critical structures such as fills and impoundments which are prone to catastrophic failure. The permanent regulatory program envisioned that a general plan, concerning the description and location of such structures, the geologic and hydrologic assessment, and the evaluation of impacts from subsidence, was to be prepared by engineers registered on the basis of their experience in such designs. These portions of the design are important to the assurances of public safety and environmental protection intended by SMCRA. Although PA 87.73(d)(1) provides that a detailed plan be prepared by a registered professional engineer, the Secretary finds that the omission of the requirement for preparation of the general plan by a registered professional engineer or professional geologist is less effective than 30 CFR 780.25(a)(1)(i). Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements.

14.5 PA 90.39 does not specify that each detailed design plan must include any geotechnical investigation and design and construction requirements for impoundments associated with coal refuse operations as provided in 30 CFR 780.25(a)(2)(ii) and 780.25(a)(3)(ii). While this requirement exists for coal waste structures in PA 90.39(f), the provisions must also be applicable to any sediment control structure or other impoundments appurtenant to Chapter 90 activities. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements in this regard.

14.6 PA 87.73, 87.112(b), 90.39 and 90.112(b) omit the Federal provisions of 30 CFR 780.25 (b) and (c), which through incorporation of MSHA plan requirements, require that plans for all sedimentation ponds and permanent or temporary impoundments contain the geotechnical information specified in 30 CFR 77.216-2(a) (5) and (6). Those structures under the jurisdiction of PA Chapter 105 (based on combinations of size/volume/watershed) are subject to the same plan requirements as MSHA structures; however, non-Chapter 105 sediment or temporary and permanent impoundments are not required by PA 87.73, 87.112(b), 90.39 or 90.112(b) to include geotechnical information on the type, size, range of engineering properties of the embankment and foundation materials. These data are needed by the design and construction engineers and the regulatory authority for predicting stability, developing construction requirements, and anticipating the general performance of the structure. Without this information, the operation and reclamation plan cannot demonstrate achievement of the performance standards of SMCRA. The Secretary finds that the omission of these requirements renders the Pennsylvania regulations less effective than the Federal provisions, and conditions approval of the Pennsylvania program upon the addition of these plan requirements to its regulations or otherwise amend its program to be no less effective than the Federal requirements.

14.70 PA 87.73 and 90.93 do not require a stability analysis, supporting calculations and justification of parameters for structures 20 feet or higher or which impound more than 20 acre-feet as required by 30 CFR 780.25(f) and 77.216-2(a)(13). As discussed in Finding 14.6 above, this type of geotechnical data is necessary to demonstrate that the performance standards of Section 515(b) of SMCRA are attainable, as required by Section 510(b) of SMCRA. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment which is no less effective than 30 CFR 780.25(f).

14.8 PA 88.491(i) does not require that the permit application for anthracite underground mining operations contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area as set forth in 30 CFR 783.24(a). Section 507(b)(2) of SMCRA requires that the ownership of

both the surface and subsurface estates has to be established prior to mining. Therefore, approval of the Pennsylvania program is conditioned upon the addition of a requirement to its regulations or other program amendment which is no less effective than 30 CFR 783.24(a).

14.9 PA 89.141(d)(8) only requires that maps delineate the location of buildings, roads, surface water bodies, etc. for areas covered by a subsidence control plan. 30 CFR 783.24 and 783.25 require that maps depict the location of such surface features for the entire permit area and be submitted with the permit application. Since a subsidence plan would not necessarily encompass the entire permit area, the Secretary finds PA 89.141(d)(8) less effective than 30 CFR 783.24 and 783.25. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its regulations or other program amendment requiring that the permit application contain maps identifying the location of certain surface features for the entire permit area which are no less effective than 30 CFR 783.24 and 783.25 and in accordance with Section 507(b) (13) and (14) of SMCRA.

14.10 PA 88.491(i) and 89.141(d)(8)(ii) do not require maps showing the location of all buildings in and within 1,000 feet of the proposed permit area together with identification of the current use of such buildings as set forth in 30 CFR 783.24(d). Section 507(b)(13) of SMCRA is specific in requiring the mapped location of all buildings within 1,000 feet of the permit area. Moreover, information on building use is necessary to determine whether the building is an occupied dwelling under Section 522(e)(5) of SMCRA. Identification of structures and their use is needed to determine the impact of mining and other functions in the community. Therefore, approval of these portions of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than 30 CFR 783.24(d).

14.11 PA 89.141(d)(8)(iv) does not require that the permit application for underground mining operations contain a map showing each public road located in or within 100 feet of the proposed permit area as set forth in 30 CFR 783.24(h) and in accordance with Sections 507(b)(13) and 522(e)(4) of SMCRA. This information is necessary to prevent or minimize disruption to traffic flows, hazards to travelers, and provide restoration of traffic flow and access after mining. Therefore, the

Secretary disapproves PA 89.141(d)(8)(iv) regarding public roads. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336), any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980, (10 Pa. Bull. 4789). Since the provisions of PA 89.21(6) of Pennsylvania's December 20, 1980 regulations are no less effective than 30 CFR 783.24(h), no condition is necessary.

14.12 PA 86.37(12) does not require the applicant to obtain, with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region as set forth in 30 CFR 786.19(1) and in accordance with Section 510(d)(1) of SMCRA. This requirement ensures that the regulatory authority makes specific findings before issuing a permit for mining on prime farmland. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment which is no less effective than the provisions of 30 CFR 786.19(1). (See Finding 14.3 above.)

14.13 PA 86.38 does not require reconstruction of existing non-conforming structures without causing significant harm to the environment or public health or safety within six months after issuance of a permit as set forth in 30 CFR 786.21. The requirement to allow up to six months for reconstruction of existing non-conforming structures reflects the need to bring structures into compliance with the full complement of performance standards within a reasonably prompt period of time. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment to provide standards regarding reconstruction of non-conforming structures which are no less effective than 30 CFR 786.21.

Finding 15

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to regulate coal exploration consistent with 30 CFR Parts 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. This finding is made under the requirements of 30 CFR 732.15(b)(3).

The Pennsylvania program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Section 3 of PASMCR and throughout the Pennsylvania regulations, Chapters 86 and 89 of Title 25, Pennsylvania Code. Chapter IV-G of the Pennsylvania program includes a discussion of the systems for coal exploration, review and approval.

Finding 16

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Operations extracting coal incidental to government-financed construction are not exempt from the requirements of the Pennsylvania surface mining laws and regulations.

Finding 17

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Pennsylvania consistent with the requirements of Section 517 (Inspection and Monitoring) of SMCRA and 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement). This finding is made under the requirements of 30 CFR 732.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and enforcement are found in several sections of CRDCA, PASMCR, BMSLCA, and TCSL, the Pennsylvania regulations, Subchapter H of Chapter 86 of Title 25 Pennsylvania Code, and Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapters III and IV of the program submission contain a discussion of Pennsylvania's inspection procedures to be implemented by the Department of Environmental Resources.

Finding 18

The Secretary finds that the Department of Environmental Resources

has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains, except as noted below, adequate provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (Performance Bonds). This finding is made under the requirements of 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII for performance bonds are incorporated in several sections of CRDCA, PASMCR, BMSLCA and TCSL and the Pennsylvania regulations, Subchapter F of Chapter 86 of Title 25, Pennsylvania Code. Chapters III and IV of the program submission contain descriptions of the Commonwealth's process for implementing, administering and enforcing a system of performance bonds and liability insurance or other equivalent guarantees.

Discussion of significant issues raised during the review of the Pennsylvania's bonding and insurance provisions follows:

18.1 PA 86.172(d) does not prohibit bond release for anthracite mining operations until after the soil productivity for prime farmlands has been returned to a level of yield comparable with non-mined prime farmland as set forth in 30 CFR 807.12(e)(2)(iii) and in accordance with Section 519(c)(2) of SMCRA. This requirement ensures that soil productivity of prime farmland is returned to its original condition prior to mining. Since Section 529(a) of SMCRA does not provide an exemption for anthracite operations from these requirements of Section 519, the State program must include them. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of regulations or other program amendment which are no less effective than 30 CFR 807.12(e)(2)(iii). (See Finding 14.3 above.)

18.2 Although the Pennsylvania program meets the minimum requirements of Sections 509 and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII, the Secretary is concerned about the continuing adequacy of the amount of the bond and permit fee required for permit areas that is applied to bond forfeitures in Pennsylvania. Pennsylvania has the authority and responsibility under PA 86.145 to review at least annually and, if necessary, revise the bonding amount required for permit areas to reflect the current cost of

reclamation to the State. The Secretary is aware of the bonding adequacy review currently being conducted by the State. To facilitate OSM oversight of this matter, the Secretary requires Pennsylvania to submit the study to OSM and to make any adjustments as necessary to cover reclamation costs. OSM in its oversight program will closely monitor the bonding provisions in the Pennsylvania program and all other State programs.

Finding 19

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to provide for civil and criminal sanctions for violations of Pennsylvania laws, regulations and conditions of permits and exploration approvals, including civil and criminal penalties in accordance with Section 518 of SMCRA and consistent with 30 CFR Part 845, including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR 845 are incorporated in several sections of CRDCA, PASMCR, BMSLCA and TCSL, the Pennsylvania regulations, Subchapter G of Chapter 86 of Title 25 Pennsylvania Code, and Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapter IV of the program narrative contains descriptions of Pennsylvania's procedures for civil and criminal sanctions.

Finding 20

The Secretary finds that the Department of Environmental Resources has, except as noted below, the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA and consistent with 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement), including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in several sections of CRDCA, PASMCR, BMSLCA and TCSL, the Pennsylvania regulations, Subchapter H of Chapter 86 of Title 25 Pennsylvania Code, and Parts

200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapter IV of Pennsylvania's program submission contains a discussion of the Commonwealth's procedures for issuing, modifying, terminating or enforcing notices of violation, cessation orders and show-cause orders.

Discussion of significant issues raised in the review of the Commonwealth's inspection and enforcement procedures are as follows:

20.1 Unlike 30 CFR 843.12 and Section 521(a)(3) of SMCRA, PA 86.211 provides additional time beyond the 90 days allowed for abatement if the time is essential for the achievement of the statutory standards of environmental protection. This provision is not consistent with the Federal requirements in that it does not adequately limit the circumstances when additional time beyond the 90-day abatement period should be allowed. Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment that will limit the circumstances where abatement times in excess of 90 days will be permitted consistent with 30 CFR 843.12 and Section 521(a)(3) of SMCRA.

20.2 Neither PA 86.213 nor Part 300-2.10 of the Bureau of Mining and Reclamation's Policy and Procedure Manual requires the department to review and suspend a permit based on a pattern of violations consistent with 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA. Accordingly, approval of the Pennsylvania program is conditioned upon the addition of a requirement to its regulations or other program amendment providing for a mandatory review of permits for a pattern of violations and a suspension of a permit based on a pattern of three or more violations within a 12-month period if committed willfully or through unwarranted failure to comply consistent with 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA.

Finding 21

The Secretary finds that the Department of Environmental Resources has the authority and the Pennsylvania program contains adequate provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F (Designation of Lands Unsuitable for Mining). This finding is made under the requirements of 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in several sections of CRDCA, PASMCR and TCSL and the Pennsylvania regulations, Subchapter D of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV-E of the Pennsylvania program narrative describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system.

Finding 22

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program provides for public participation in the development, revision and enforcement of Pennsylvania laws and regulations and is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements of SMCRA and 30 CFR Chapter VII are included throughout the Pennsylvania surface mining laws and the state regulations submitted as part of the program. Chapter III-D of the program narrative describes the procedures for ensuring that adequate public participation is provided throughout the development and functioning of the state program.

Finding 23

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program includes adequate provisions to monitor, review and enforce the prohibition against indirect or direct financial interest in coal mining operations by employees of the Department of Environmental Resources consistent with 30 CFR Part 705 (Restrictions on Financial Interests of State Employees). This finding is made under the requirements of 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA and of 30 CFR Chapter VII are incorporated in Section 1928-A of the Administrative Code of 1929 and the Pennsylvania regulations, Subchapter I of Chapter 86 of Title 25 Pennsylvania Code. Chapter III-C of the Pennsylvania program narrative describes the system for monitoring and enforcing prohibitions against indirect or direct financial interests in coal mining operations by State employees.

Finding 24

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the program includes adequate provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA to the extent required for approval of its program. This finding is made under the requirements of 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in Section 4.2(b) of PSMCRA.

Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing training, examination, and certification of blasters until six months after Federal regulations for these provisions have been promulgated. Federal regulations have not been promulgated at this time. Whenever OSM issues final rules on this subject, Pennsylvania will be required to have regulations consistent with them and provide a description of the system for implementing these provisions as required by 30 CFR 731.14(g)(13).

Finding 25

The Secretary finds that the Department of Environmental Resources has the authority by law and regulation and the Pennsylvania program contains adequate provisions to provide for small operator assistance consistent with 30 CFR Part 795 (Small Operator Assistance). This finding is made under the requirements of 30 CFR 732.15(b)(13).

Provisions corresponding to Section 507(c) of SMCRA are incorporated in Section 18.7 of PSMCRA and the Pennsylvania regulations, Subchapter C of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV-F of the Pennsylvania program narrative describes the small operator assistance program within the Commonwealth.

Finding 26

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and the Pennsylvania program contains adequate provisions to provide for the protection of employees of the Department of Environmental Resources in accordance with the protection afforded Federal employees under Section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

Section 18.6 of PSMCRA, Section 7 of CRDCA, Section 17.1 of BMSLCA,

and Section 611 of TCSL provide for government employee protection in accordance with Section 704 of SMCRA.

Finding 27

The Secretary finds that the Department of Environmental Resources has, except as discussed below, the authority by law and regulation and the Pennsylvania program contains adequate provisions to provide for administrative and judicial review of state program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement). This finding is made under the requirements of 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA are incorporated in several sections of CRDCA, PSMCRA, BMSLCA, Ad. Code and TCSL and Subchapter H of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV-C of the program submission contains a discussion of Pennsylvania's administrative and judicial review procedures.

Only one significant issue was raised in the review of the Pennsylvania administrative and judicial review procedures as follows:

27.1 Unlike 30 CFR 840.15 and Section 525(e) of SMCRA, Pennsylvania law does not adequately provide for awarding attorney's fees. Although Section 307(b) of TCSL provides that costs and expenses, including attorney's fees, can be awarded by the Environmental Hearing Board for any proceeding brought under the Act, Section 4(b) of PSMCRA, Section 5(i) of CRDCA and Section 5(q) of BMSLCA only authorize attorney's fees for administrative proceedings involving permit approval or bond release. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its laws or other program amendment providing that costs and expenses, including attorney's fees, can be awarded for any proceeding brought under the aforementioned laws.

Finding 28

The Secretary finds that the Department of Environmental Resources has the authority under its surface mining laws and regulations and the Pennsylvania program contains adequate provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(16).

Several sections of the Pennsylvania surface mining laws and regulations

provide for public notice of applications for permits, applications for permit revisions and bond release and actions to revoke permits.

Finding 29

The Secretary finds that the Pennsylvania surface mining laws and regulations and the Pennsylvania program contain no provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

In Pennsylvania's permanent program submission, the following laws other than the Pennsylvania surface mining laws were referenced as legal authority for various sections of the Pennsylvania program:

Administrative Agency Law, PA C.S., Section 501 *et seq.*;
Right to Know Law, 65 P.S., Section 66.1 *et seq.*;
Statutory Construction Act, 1 P.S., Section 1925;
41 P.S., Section 202; and
Administrative Code of 1929, 71 P.S., Section 201 *et seq.*

Other State laws and regulations directly affecting the regulation of surface coal mining and reclamation operations include:

Commonwealth Documents Law, 45 P.S., Section 1101 *et seq.*;
Appellate Court Jurisdiction, 17 P.S., Section 411;
Open Meeting Law, 65 P.S., Section 261 *et seq.*;
42 P.S., Section 763;
Dam Safety Act, No. 1978-325;
Solid Waste Management Act 1980, July 7, 1980, Section 101 *et seq.*;
Use of Explosives Act No. 362, July 10, 1957, P.L. 685, as amended July 12, 1961 and January 26, 1966;
Explosives Act No. 537, July 1, 1936, as amended April 27, 1939 and May 22, 1953;
Air Pollution Control Act, January 8, 1960, P.L. (1959) 2119, Section 1, as amended;
Pennsylvania Gas Operations, Well-Drilling, Petroleum and Coal Mining Act; Includes Act Number 225, Session of 1955; Act Number 722, Session of 1959; Act Number 359, Session of 1961;
Act Number 17, Session 1972—Substrata Evaluation—School Districts;
Act Number 275, Session of 1970—Creation of Department of Environmental Resources;
Title 25, Chapter 21, Environmental Hearing Board Rules and Regulations;
Title 25, Chapter 75, Solid Waste Management Rules and Regulations;
Title 25, Chapter 77, Mining Rules and Regulations;
Title 25, Chapter 79, Oil and Gas Conservation;
Title 25, Chapter 91, General Provisions;
Title 25, Chapter 92, National Pollutant Discharge Elimination System;

Title 25, Chapter 93, Water Quality Standards;
 Title 25, Chapter 95, Wastewater Treatment Requirements;
 Title 25, Chapter 97, Industrial Wastes;
 Title 25, Chapter 101, Special Water Pollution Regulations;
 Title 25, Chapter 102, Erosion Control;
 Title 25, Chapter 105, Dam Safety and Waterway Management Rules and Regulations;
 Title 25, Chapter 209, Coal Mines;
 Title 25, Chapter 210, Use of Explosives; and
 Title 25, Chapter 211, Storage, Handling and Uses of Explosives.

In the substantive review of the program submission, these laws and regulations were reviewed as part of the adequacy analysis or reviewed for their potential for conflicting with the statutory and regulatory elements of the Pennsylvania program. No conflicts were found which might weaken those Pennsylvania surface mining laws and regulations which form the basis for implementation of a program consistent with the provisions of SMCRA and 30 CFR Chapter VII.

The provisions in these laws and regulations which constitute Pennsylvania's requirements corresponding to minimum standards found in SMCRA and 30 CFR Chapter VII are part of the state regulatory program being approved today.

Finding 30

The Secretary finds that the Pennsylvania Department of Environmental Resources has demonstrated that it will have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements) and other applicable State and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

D. Disposition of Agency and Public Comments

The comments received on the Pennsylvania program resubmission during the public comment period raised various issues. The Secretary considered these comments in evaluating Pennsylvania's program, as indicated below.

In three instances public comments were submitted by a collection of organizations as a group. In one case, the organizations represented are: the Environmental Policy Institute (EPI), the National Audubon Society, the National Wildlife Federation, the Pennsylvania Environmental Council, Inc., the Pennsylvania Federation of Sportsmen Clubs and the Sierra Club, Pennsylvania

Chapter. In addressing the comments made by this group, the Secretary has identified the commenters as "EPI *et al.*" The second group consists of the Western Pennsylvania Surface Mining Operators Association; Sunbeam Coal Corporation of Boyers, Pennsylvania; West Freedom Mining Corporation of Kittanning, Pennsylvania; Kerry Coal Company of Portersville, Pennsylvania; and an individual. As this group of commenters specifically adopted and endorsed the comments made by the Pennsylvania Coal Mining Association (PCMA) and made no further or additional comments, the Secretary has identified the commenter as "PCMA *et al.*" Comments by the third group, the Pennsylvania Chapter of the National Association of Water Companies *et al.*, also includes those made by the American Water Works Service Company, Inc. since both organizations made similar comments. Comments from groups or agencies are identified by name but names of individuals have not been used.

In addition, as comments were received on both the December 20, 1980, Pennsylvania regulations (Administrative Record No. PA 292) and the amended regulations (Administrative Records Nos. PA 321 and 336), the Secretary found it necessary to address all comments on the regulations using the amended version of the Pennsylvania regulations as the basis for his comparative analysis with the Federal requirements. The only exception to this rule is the regulations governing anthracite mining which were contained in the initial resubmission (Administrative Record No. PA 292) and which were not a part of the amendments. When issues or deficiencies may have, in fact, existed in the December 20, 1980 regulations but were corrected in the amendments, the discussion in disposing of the comment will be, in most cases, based on the amended version of the regulations. In addition, in instances when the Pennsylvania regulatory provisions have been renumbered, the new citation has been provided.

The Secretary would like to express his gratitude to all those commenters who took the time and interest to review the Pennsylvania program. The comments received were most useful in assisting the Office of Surface Mining and the Department in their review and in making the Secretary's final decision on the program.

I. Designating Lands Unsuitable

1. PCMA *et al.* stated that PA 86.121(a) is less effective than 30 CFR 762.13(b) because Pennsylvania does not

exempt from the designation process areas permitted under mine drainage permits issued pursuant to The Clean Streams Law. The commenters stated that SMCRA intended that a Pennsylvania mine drainage permit be accorded the status of a mine permit or a bonded increment for purposes of establishing valid existing rights as to areas unsuitable for mining. The Secretary disagrees with this comment. Pennsylvania has exempted from the designation process those areas covered by a surface mining permit. The fact that the Commonwealth has elected not to apply a blanket exemption to the designation process for areas covered by a mine drainage permit is no less effective than the Federal provisions. Mine drainage permits issued prior to the effective date of SMCRA typically covered an area much larger than the specific area the operator intended to disturb. The determination of valid existing rights is a case by case determination and will be made by the Commonwealth based on the facts submitted by the operator. Therefore, the Secretary finds that Pennsylvania's approach is no less effective than with 30 CFR 762.13(b).

2. PCMA *et al.* stated that the Pennsylvania program did not provide for judicial review of petitions to designate areas unsuitable as required by 30 CFR 764.19(c). The Secretary disagrees with this comment. Section 1921-A of the Pennsylvania Ad. Code provides in Subsection c that:

* * * No such action of the department adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board * * *

Furthermore, 42 Pennsylvania Statute, Section 763 provides that:

* * * The Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of government agencies in the following cases:

All appeals from Commonwealth agencies under Subchapter A of Chapter 7 of Title 2 (relating to judicial review of Commonwealth agency action) or otherwise and including appeals from the Environmental Hearing Board, the Pennsylvania Public Utility Commission, the Unemployment Compensation Board of Review and from any other Commonwealth agency having Statewide jurisdiction.

Accordingly, any final action of the Department is subject to judicial review. Therefore, the Secretary finds the Pennsylvania provisions no less effective than 30 CFR 764.19(c).

II. Permitting

1. EPI *et al.* stated that Pennsylvania does not define "affected area" in PA Chapter 89, and thereby fails to insure that it will construe that term so as to include the surface over underground mine workings as provided for in 30 CFR 701.5. PA 86.1 defines the permit area for underground mining activities to include the mine and the surface area within which underground mining activities are conducted. The Secretary finds that Pennsylvania's "permit area" will encompass the "affected area" as defined in 30 CFR 701.5 and is, therefore, no less effective than the Federal requirements.

2. The Soil Conservation Service of the U.S. Department of Agriculture (SCS) suggested that the Pennsylvania regulations provide a definition for "hayland" and that the term "fish and wildlife habitat" is inappropriate as a land use classification in PA 87.1(B)(vii). The Secretary finds that the Pennsylvania definitions and terms and their use contextually are identical to those found in 30 CFR 701.5 and, thus, disagrees with this comment.

3. PCMA *et al.* commented that the definition of coal exploration at PA 86.132 is as effective as 30 CFR 701.5, in accordance with Section 512 of SMCRA and as a result appropriate compliance under the Commonwealth's regulatory program is required for exploration activities. The Secretary agrees with the commenter and has approved the Pennsylvania definition.

4. The U.S. Fish and Wildlife Service (FWS) commented that the Pennsylvania program narrative (Administrative Record PA No. 292, *Pennsylvania's Coal Mining Regulatory Program*, p. 43) fails to demonstrate that the State has a viable system for consulting with State and Federal agencies having responsibility for the protection and management of fish and wildlife and related values as required by 30 CFR 731.14(g)(10). FWS also stated that even though the narrative describes the roles of the Pennsylvania Fish and Game Commissions, the Game Commission is limited to commenting on operations when located within or adjacent to a State Game Land and appears to limit similarly Federal involvement. The FWS recommended that Pennsylvania expand its narrative to describe methods of obtaining information on fish, wildlife and plants, including endangered species, at all proposed permit sites. The Secretary disagrees with this comment. The narrative in the Pennsylvania program states that the DER informs, consults, coordinates, and exchanges data with

other government agencies which have responsibilities that may be affected by a proposed coal mining activity and names certain agencies including the Pennsylvania Fish and Game Commissions with which the Pennsylvania DER routinely works. The FWS misread the Pennsylvania provision. OSM has verified with the DER that coordination with both State and Federal fish and wildlife agencies will occur even though FWS is not specifically listed and that input by the Pennsylvania Game Commission is not limited to only those instances in which the operation is located within or adjacent to State game land (Administrative Record No. PA 367). Since the DER Pennsylvania has stated that it will inform, consult, coordinate, etc., with the Pennsylvania Fish and Game Commission and the FWS on all proposed permit sites, no narrative or systemic change is needed.

5. The Pennsylvania Historical and Museum Commission commented that the Pennsylvania regulations do not contain adequate provisions in the permit application and review requirements to insure protection of cultural resources, including both known and unknown archeological sites. Except as discussed in Finding 14.1 the Secretary has found that the Pennsylvania regulations are no less effective than the Federal regulations in providing adequate protection to cultural resources in surface mining activities. Permit application requirements which require identification and location of such resources and the impacts upon them are found throughout PA Chapters 86, 87, 88, 89 and 90. Furthermore, the Pennsylvania DER, in accordance with PA 86.31(c), provides notice of receipt of permit applications to the Pennsylvania Historical and Museum Commission for review to assure maximum protection of the Commonwealth's cultural resources as required by 30 CFR 770.12(c) (Administrative Record No. 292, *Pennsylvania Coal Mining Regulatory Program*, p. 43).

6. The Advisory Council on Historic Preservation commented that Pennsylvania's regulations do not provide for the identification and protection of historic properties within coal exploration areas. The Secretary disagrees with this comment. PA 86.133(e) requires that any person who intends to conduct coal exploration activities involving more than 250 tons of coal obtain a permit in accordance with Chapter 86. Therefore, the Secretary finds that the provisions of PA 86.37(a)(5), 86.102(c) and 86.133(e) are no

less effective than 30 CFR 776.12(a)(3) and (i), 776.13(b)(3), and 810.2(h).

7. The Advisory Council on Historic Preservation commented that PA 87.77, 89.38(a), and 90.40 do not provide adequate protection to historic properties consistent with the Federal requirements. The Secretary disagrees with this comment. PA 86.37(a)(5), 86.102(c), 87.77, 89.38(a) and 90.40 are no less effective than 30 CFR 761.12(f), 780.31, and 784.17 in providing adequate protection to historic properties. It should be noted that 30 CFR 761.12(f)(1) has been suspended insofar as it would apply to privately owned sites listed on the National Register of Historic Places, and to publicly-owned places (*In re: Permanent Surface Mining Regulation Litigation*; Civil Action No. 79-1144, May 16, 1979).

8. PCMA *et al.* commented that PA 86.62(d) is as effective as 30 CFR 778.13(d) by requiring the applicant to list all current or previous permits held by the applicant for the five year period immediately preceding the application and not subsequent to 1970. As Pennsylvania indicated in its program, this information provides the state regulatory authority and the public with an indication of the ability or willingness of operators to comply with their laws. According to Pennsylvania, it is more important to require a statement of all permits held in 1977, just before substantial changes made by SMCRA went into effect. Permits held as of 1970, but for which bonds were released prior to 1977, are not going to provide useful information about the likelihood of compliance under the new program. Also, the more recent permits are likely to tell the public and the regulatory authority more about the proposed operation because the officers, owners, etc., are more likely to be the same. Since compliance with the more recent permits provide an excellent history as to how the operator is likely to comply with the permanent program requirements, the Secretary finds that PA 86.62(d) is no less effective than 30 CFR 778.13(d).

9. PCMA *et al.* stated that the requirement in PA 86.62(a)(4) to identify interests in land contiguous to the area to be covered by a permit as required by 30 CFR 778.13(g) is not relevant to a permit decision and should not be required because it is highly sensitive commercial information. The Secretary disagrees with this comment. Confidentiality of the information is adequately protected by PA 86.35 which is no less effective than 30 CFR 786.15. Since Pennsylvania has amended its regulations, the Secretary finds that PA

86.62(a)(4) is no less effective than 30 CFR 778.13(g) and is consistent with Section 508(a)(11) of SMCRA.

PCMA *et al.* commented that the omission in PA 86.63(4) of the requirement to list pending notices of violation in the permit application does not render it less effective than 30 CFR 778.14. The Secretary agrees with this comment and has approved the Pennsylvania provision accordingly. The Pennsylvania requirements (Section 3(b) of SMCRA, Section 4(b) of CRDCA, Section 5(f) of BMSLCA, and Section 609 of TCSL) will result in a listing of all violations which would tend to establish the applicant's willingness and ability to comply with environmental performance standards. Since all cease orders must be listed, the regulatory authority will be on notice as to any violation which may be unabated and, therefore, will have information sufficient to determine if the permit should be denied in accordance with Section 510(c) of SMCRA. Furthermore, the Pennsylvania DER will be aware of violations issued by state inspectors and PA 86.63(4) gives Pennsylvania the authority to demand any additional information relating to compliance history which the regulatory authority deems relevant.

11. PCMA *et al.* stated that it is unnecessary to require that the permittee list all other licenses and permits needed to conduct the proposed mining as set forth in 30 CFR 778.19. The Secretary disagrees with this statement. This information is needed to ensure that the proposed operation will not be inconsistent with the requirements of other statutes. Although not required by PA 86.68, Pennsylvania's surface mining laws provide that a permit application must comply with the requirements of the Pennsylvania Air Pollution Control Act, Pennsylvania Solid Waste Management Act, Dam Safety Control Act, etc.; consequently, an application pursuant to PA Chapter 86 will contain the specifics on meeting the requirements of other statutes. Therefore, the Secretary finds that PA Chapter 86, together with other statutory provisions, is no less effective than 30 CFR 778.19.

12. EPI *et al.* commented that PA 86.68 does not provide that operators identify in their permit applications a list of other licenses that they will need to conduct mining activities as required by 30 CFR 778.19. The Secretary agrees with this comment. However, although not required by PA 86.68, Pennsylvania's surface mining laws provide that a permit application must comply with the requirements of the Pennsylvania Air Pollution Control Act, Pennsylvania

Solid Waste Management Act, Dam Safety Control Act, etc.; consequently, an application, pursuant to PA Chapter 86, will contain the specifics on meeting the requirements of other statutes. Therefore, the Secretary finds that PA Chapter 86, together with other statutory provisions, is no less effective than 30 CFR 778.19.

13. The Advisory Council on Historic Preservation commented that PA 87.42(2) and PA 89.38(a) limit identification of historic properties to the review of available data. The Secretary finds PA 87.42(2) and 89.38(a) contain identical provisions to 30 CFR 779.12(b) and 783.12(b), respectively, and are therefore no less effective than the Federal requirements.

14. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended the inclusion of baseline water quality and quantity information in mining permit applications. The Secretary finds that PA 87.45, 87.46, 88.25, 88.26, 89.34, 90.13 and 90.14 are no less effective than the provisions in 30 CFR 779.13, 779.15 and 779.16 for collection and monitoring of baseline water quality and quantity information and the protection of the hydrologic balance. The Secretary, therefore, cannot require regulations in excess of those contained in Federal rules.

15. EPI *et al.* stated that PA 87.44 deletes the requirement of 30 CFR 779.14(b)(1) (iii) and (v) for physical properties of overburden and analysis of sulfur forms in the coal, and, that Pennsylvania provides for a waiver from the chemical analysis requirements of 30 CFR 779.14(b)(1)(iv). The Secretary finds that PA 87.44(1) requires lithologic and physical characteristics of each stratum and coal seam, that PA 87.44(3) requires chemical analyses of the coal and overburden, and that PA 87.44(5) provides DER the authority to request other analyses relevant to evaluating the impacts of mining. The combination of these permit provisions with PA 86.37 and the performance standards in PA Chapter 87 are no less effective than the Federal program requirements. The Secretary further finds that the waiver of test borings and core sampling contained in 30 CFR 779.14(b)(3) would, in turn, waive chemical analyses since no samples would exist to be tested. The Secretary concludes that the waiver in PA 87.44(3) is specifically allowed by Section 507(b)(15) of SMCRA and is, therefore, no less effective than 30 CFR 779.14(b)(3).

16. The Pennsylvania Chapter of the National Association of Water Companies *et al.* suggested that each

application for a mining permit include a specific plan, concurred on by the public water supplier, on how the mining company proposes to replace a water supply if it should be damaged or destroyed; along with posting a bond to assure that the work will be done. An interim emergency plan for assuring continuation of water supplies to be funded by "No Fault" insurance posted by the mine operator was also suggested to cover the full cost of an interior supply and operating costs. The Secretary finds that the provisions of PA 87.47, 87.119, 86.31 and 86.168 are no less effective than 30 CFR 779.17 *et seq.* and in accordance with Section 717 of SMCRA. Therefore, the Secretary has no legal authority to condition the Pennsylvania program to require additional provisions on replacement of water supplies.

17. The SCS agreed that productivity be based on yield data from the United States Department of Agriculture, but suggested that the Soil Conservation Service be specifically consulted and that the Pennsylvania Department of Agriculture be eliminated as a data source. The Secretary finds that the provisions in PA 87.52(a)(2)(ii) are no less effective than 30 CFR 779.22(a)(2)(ii) which allows the state regulatory authority a wide range of acceptable options for identifying the source for comparative data on soil yields, including those required by the Pennsylvania regulation.

18. EPI *et al.* stated that PA 87.52 did not provide requirements as contained in 30 CFR 779.22(b) for a description of previously mined lands which might be impacted by mining and reclamation operations. The Secretary finds that the provisions pertaining to previously mined areas in PA 87.54(a) (17), (18), 87.44(4), and the land use requirements of PA 87.52 are no less effective than 30 CFR 779.22(b) inasmuch as the Federal provision requires such descriptions only if they are available.

19. The SCS recommended that certain contour intervals be used rather than actual slope measurements to provide information on drainage patterns and surface configurations and that certain map information on water control facilities and revegetation should be provided in the Pennsylvania regulations. The information and mapping requirements contained in the Pennsylvania regulations are no less effective than the Federal requirements. PA 87.54(a)(21) requires maps with slope measurements and contours as does 30 CFR 779.25(k). PA 87.68(3) requires a reclamation plan for backfilling and grading including maps and cross-

sections showing the final configuration as does 30 CFR 780.18(b)(3). PA 87.65(a)(7) requires maps and plans for water control facilities as does 30 CFR 780.14(a)(6). PA 87.68(5) requires a revegetation plan as does 30 CFR 780.15(b). Collectively, these requirements result in adequate information for the DER to assess the permit application and to ensure appropriate mining and reclamation practices.

20. EPI *et al.* stated that PA 87.57 omitted the requirement of 30 CFR 779.25(b) that the elevation be given for monitoring stations. The commenter's primary concern was that the deletion of this requirement would hamper the determination of hydraulic head at any given monitoring point. The location and elevation of springs, deep mine discharges, wells and boreholes are required by PA 87.44(1), 87.54(a)(7), 87.54(a)(14) and 87.46(b)(1); the depth to groundwater over the general area and a description of groundwater system are required by PA 87.43 and 87.45; the surface water system must be defined in accordance with PA 87.46; and, PA 87.65(b) requires maps and plans to be of adequate detail and scale. The Secretary finds the combination of these requirements sufficient to allow determination of any other elevations necessary. Subsequently, the Secretary finds PA Chapter 87 no less effective than 30 CFR 779.25(b) in aiding to establish hydraulic head at monitoring stations.

21. SCS commented that a major flaw in Pennsylvania's program results because provisions are not made for adequately planning and implementing surface water control during the reclamation phase of mining. It also stated that water control is a key part of establishing vegetation. According to the findings of the Secretary's review, the Pennsylvania program (PA 87.46, 87.48, 87.49, 87.52, 87.54, 87.68 through 87.73, 87.101 through 87.121, and the comparable sections of PA Chapters 88, 89, and 90) require maps, plans and execution specifics for water control before and during reclamation which are no less effective than those provided in the Federal regulations under SMCRA. Also, revegetation planning, accomplishment and evaluation standards under the Pennsylvania program (PA 87.49, 87.68, 87.96 through 87.100, and PA 87.146 through 87.156), except as discussed in Finding 13.8, have been found to be no less effective than those provided in 30 CFR 780 *et seq.* The Secretary cannot require provisions beyond those of the Federal rules.

22. PCMA *et al.* contended that PA 87.64 contains sufficiently detailed blasting plan requirements for permit applications to assure compliance with the performance standards; and, that it is as effective as 30 CFR 780.13. The Secretary agrees with this contention and has approved the Commonwealth's blasting plan requirements.

23. EPI *et al.* pointed out that the omission of certain requirements from PA 87.64 renders it less effective than 30 CFR 780.13 for the purpose of assessing the potential defects in proposed blasting operations. The specific requirements cited by the commenter as being omitted are information on types and amounts of explosives, blasting procedures, blast monitoring equipment, and plans for recording and reporting results of preblast surveys. The essential data for determining blasting procedures and types and amounts of explosives have been retained in PA 87.124 through 87.129. The Secretary, therefore, finds that PA 87.64, and PA 87.124 through 87.129 makes the Pennsylvania program no less effective than 30 CFR 780.13.

24. EPI *et al.* commented that Pennsylvania fails to incorporate in PA 87.67 and 89.31 those portions of 30 CFR 780.16 and 784.21 still in effect for fish and wildlife plans. The Secretary disagrees with this comment. The Federal regulations regarding the fish and wildlife plan requirements were remanded by the District Court in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action 79-1144, May 16, 1979) and the Secretary published a notice in the *Federal Register* on August 4, 1980, (45 FR 51547-51550) suspending the fish and wildlife plan requirements of 30 CFR 780.16 and 784.21. Therefore, the Secretary can not require that these provisions be included in the program. Once new regulations are promulgated, the Secretary will afford the Commonwealth an opportunity to amend its program should it be necessary pursuant to 30 CFR 732.17.

25. EPI *et al.* stated that PA 87.68 fails to require a description of the measures to be taken during mining and reclamation operations which will maximize the use and conservation of the coal resource as provided in 30 CFR 780.18(b)(6). While the specific language does not exist in PA 87.68, it does exist in Section 4(a)(2)(K) of PASMCR. The Secretary finds that this statutory requirement, along with PA 86.37(a)(2), which requires accomplishment of mining according to the Act (PASMCR) as a permit approval criteria, and PA 87.123, which requires maximization of the use and conservation of the coal being

recovered, are no less effective than 30 CFR 780.18(b)(6) and in accordance with Section 515(b)(1) of SMCRA.

26. EPI *et al.* stated that in PA 87.68 and PA 90.33, Pennsylvania fails to require that the permit application include a description of the steps to be taken to comply with the Federal Clean Air and Clean Water Acts as provided by 30 CFR 780.18(b)(9). Although PA 87.68 and PA 90.33 do not require the application to contain the steps to be taken to comply with the Clean Air and Clean Water Acts, other permit application requirements and performance standards within Pennsylvania's regulations, specifically PA 87.66, PA 87.137, PA 87.101-121, PA 90.44, PA 90.149 and PA 90.101-121, and Pennsylvania's Clean Streams Law and Air Pollution Control Act ensure compliance with the Federal acts. The Secretary finds that inasmuch as Pennsylvania's permitting requirements and performance standards ensure compliance with the Clean Air and Clean Water Acts, it is unnecessary for the applicant to describe the steps to be taken to comply with the Federal laws.

27. EPI *et al.* stated that "PA 87.69 (e) and (f) and PA 90.3" (sic) "fail to require operators to meet the requirements for detailed design plans for ponds and other impoundments contained at 30 CFR 780.25." The commenter's lack of specificity does not allow the Secretary to discern or address the precise issue raised. The Secretary has, however, identified several issues regarding PA Chapters 87 and 90 relative to their effectiveness comparable to 30 CFR 780.25. (See Findings 14.4, 14.6, and 14.7, above.)

28. EPI *et al.* commented that PA 87.73(c)(1) fails to require plans for embankments, ponds, etc. to be prepared by or under the direction of, and certified by a qualified professional, as required by 30 CFR 780.25(a)(1)(i). The Secretary agrees with this comment, in part. PA 87.73 (c) and (d)(1) require preparation of detailed plans for these structures by a registered professional engineer which the Secretary has deemed no less effective than the permit standards of 30 CFR 780.25(b); however, PA 87.73(b) does not require that the general plan be prepared by a registered professional engineer or other qualified professional. The Secretary has, thus, conditioned the approval of the program accordingly. (See Finding 14.4, above.)

29. EPI *et al.* stated that Pennsylvania fails to specify that plans for sediment ponds, permanent and temporary impoundments, and coal processing waste banks, dams and embankments must insure compliance with the

pertinent performance standards for these structures as required in 30 CFR 780.25 (b), (c), (d) and (e). The requirements of 30 CFR 780.25 (d) and (e) for coal waste structures are repeated in PA 90.39 (d) and (e) and are cross-referenced in PA 87.74 and 89.39. Although the cross-references of 30 CFR 780.25 (d) and (e) for sediment ponds and permanent and temporary impoundments are not specifically stated in PA 87.73, or elsewhere, the Secretary finds the lack of these cross-references renders the Pennsylvania provisions no less effective than the Federal regulations. Furthermore, the demonstration that a surface coal mining operation can be undertaken in compliance with the applicable performance standards is expressly required prior to permit issuance by PA 86.37.

30. The Advisory Council on Historic Preservation commented that PA 90.11(a)(3) is less effective than 30 CFR 780.31 by limiting the identification of historic properties to the review of available data. The Secretary disagrees with this comment. However, the Secretary finds that PA 90.11(a)(3) is less effective than 30 CFR 779.12(b) by not requiring the identification of archeological sites adjacent to proposed coal refuse permit areas. (See Finding 14.1, above.)

31. EPI *et al.* commented that the Pennsylvania program omitted the requirements of 30 CFR 784.19 and 784.25 in PA Chapter 90. The standards for returning coal waste to underground workings found in 30 CFR 784.25 appear at PA 89.40 rather than in PA Chapter 90. MSHA approval for return of coal waste to mine workings is retained in PA 89.40 and since underground development waste is considered coal waste, the disposal is governed by the provisions in PA Chapter 90. Since the Pennsylvania program defines coal waste to include underground mine development waste, the Secretary finds that the relevant portions of the Pennsylvania program are no less effective than the Federal rules.

32. EPI *et al.* stated that PA 89.48, now PA 89.39, fails to require compliance with excess spoil standards found in 30 CFR 784.19. PA 89.39 requires that excess spoil from underground operations be disposed of in accordance with the requirements of PA Chapter 90, Coal Refuse Disposal, which define coal refuse to include excess spoil as provided in PA 90.1. Cross-referencing to PA Chapter 90 makes the Pennsylvania program no less effective than 30 CFR 784.19.

33. EPI *et al.* contended that PA 89.54, now PA 89.40, fails to require

compliance with 30 CFR 784.19 and 784.25 regarding disposal of waste into underground mines as required by 30 CFR 817.88. The Secretary finds that collectively the standards of PA 89.48, PA 89.40, 89.34, 89.59 and 90.127 are identical to the requirements of 30 CFR 784.25. Comparable cross-referencing of 30 CFR 817.88 is unnecessary in light of the requirements of PA Chapter 90 which apply to underground development waste disposal through the cross-referencing of PA 89.39.

34. EPI *et al.* contended that Pennsylvania fails to require a survey to ascertain whether structures or renewable resource lands will be affected by subsidence as required by 30 CFR 784.20. The Secretary disagrees with this comment because the extensive data requirements in PA Chapter 89, Subchapter F, in particular, the subsidence control plan required by PA 89.143 will provide the same information and therefore, is no less effective than 30 CFR 784.20.

35. EPI *et al.* commented that PA 87.83 fails to meet the requirements for prime farmland contained in 30 CFR 785.17 (b), (c) and (d). The Secretary disagrees with this comment. PA 86.37(12), PA 87.53, PA 87.83, and PA 87.177 through PA 87.181 provide prime farmland requirements regarding restoration of soil productivity and permit issuance that are no less effective than 30 CFR 779.27, 785.17 and 823.

36. The SCS recommended that PA 87.83(6) be amended to require demonstration that achievement of acceptable yields for reconstructed prime farmlands can be attained within a two year period. The Secretary disagrees because 30 CFR 785.17(b)(7) only requires achievement of acceptable yields "within a reasonable time", as does the Pennsylvania provision.

37. PCMA *et al.* supported the incremental phase approval of permits allowed by PA 86.37(b). As designed by the DER, the incremental phase approval of permits does not involve a permit or permit revision, rather it represents the approval of bonding increments. The mechanics of the system will require that the full permit be approved but authorization to conduct mining activities on any given area within the permit will be given on an incremental phased basis after the area has been bonded (Administrative Record No. PA 336; *Pennsylvania Coal Mining Regulatory Program*, p. 19). The Secretary has approved this provision as being no less effective than 30 CFR Part 786 and 806.

38. The FWS commented that the notices sent to Federal and State fish and wildlife agencies of permit

applications as required by PA 86.31(c)(4) and (d) should contain additional information so that they may adequately evaluate the impacts on fish and wildlife. The Secretary finds that the Pennsylvania permitting regulations require information no less effective than 30 CFR 786.11 and cannot require the Commonwealth to provide additional information. In addition, copies of the entire application are made available by the Pennsylvania DER which may include the information desired by the commenter.

39. PCMA *et al.* stated that Pennsylvania's regulations adequately provide for informal conferences on permit actions. The Secretary concurs with this statement and finds that PA 86.31 and 86.34 are no less effective than 30 CFR 786.14.

40. The FWS stated that PA 86.31(c) provides some basis for contacting Federal and State agencies, but limits it to where those agencies have some specific "jurisdiction over or an interest in the area of the proposed activities." FWS recommended that PA 86.31(c) be amended to make clear that State and Federal fish and wildlife agencies will be given the opportunity to comment on all permit sites, not only those where they have specific "jurisdiction over or an interest in the area." The Secretary disagrees with this comment and finds that PA 86.31(c) is no less effective than 30 CFR 786.17(a)(2). Pennsylvania's term "jurisdiction over or an interest in the area" provides for a larger scope of consultation than the Federal term "responsibility for the management and protection." Since the Pennsylvania Game and Fish Commissions will have "an interest" in those resources that are proposed to be affected, those State and Federal agencies, as well as the FWS are given the right and responsibility for commenting on permit sites. Therefore, no change to the regulations is necessary.

41. The FWS commented that a number of Pennsylvania regulations relating to protection of water quality should contain the phrase "comply with local, State and Federal statutes and regulations" or that a general requirement to this effect concerning protection of fish and wildlife be contained in the Pennsylvania regulations. The Secretary disagrees with this comment and finds that the criteria for permit approval or denial found in PA 86.37 result in a determination that all applicable statutes and regulations have been complied with. The Secretary further finds this to be no less effective than 30 CFR 786.19. Moreover, the permit review

process utilized by the Pennsylvania DER incorporates additional safeguards which assure compliance by specifically soliciting comments, as required by PA 86.31(c), from government agencies with jurisdiction over or an interest in the area of proposed mining.

42. PCMA *et al.* commented that PA 86.37 is as effective as 30 CFR 786.19(j), in that it provides for the operation of mines in a manner consistent with anticipated operations in the area and not at cross purposes with adjacent operations or not to the detriment of these operations, the environment or the public. The Secretary agrees with this comment and finds the Pennsylvania rule to be no less effective than 30 CFR 786.19(j).

43. The FWS stated that PA 86.37(a)(15) contains the word "If" at the beginning of the section which renders it meaningless. FWS recommended that the word "If" be deleted. While the Secretary agrees that the language in PA 86.37(a)(15) could be improved grammatically, the Secretary finds that PA 86.37(a)(15) is no less effective than 30 CFR 786.19(o). The Secretary has determined that the Pennsylvania provision clearly provides that no permits or revisions will be issued which will affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973.

44. PCMA *et al.* commented that PA 86.38 fails to provide a six month exemption for pre-existing facilities which meet interim performance standards. Also, Pennsylvania substitutes the phrase "presumptive evidence of pollution" for "significant harm to the environment." The Secretary disagrees with this comment in part. PA 86.12 provides that an operator with an approved initial regulatory program permit may continue mining on or after eight months from the date of program approval, provided a timely and complete application has been submitted, the department has not rendered a decision with respect to the application and the operation is conducted in accordance with the initial regulatory program standards. However, operators are required to modify or reconstruct structures not in compliance with initial program performance standards to meet the more stringent permanent program design and performance standards before a permanent program permit can be issued. As discussed in Finding 14.13, the Secretary finds that PA 86.38 does not require the reconstruction of

nonconforming structures within six months after issuance of a permanent program permit as set forth in 30 CFR 786.21. As indicated in its program, Pennsylvania has proposed language to amend PA 86.38 which, once adopted, will require reconstruction of nonconforming structures within six months after issuance of the permit and ensure that the risk of harm to the environment or to public health or safety is not significant during the period of reconstruction. Until such language is adopted, the Secretary has conditioned this portion of the Pennsylvania program.

45. PCMA *et al.* commented that the Pennsylvania program does not contain timetables for decisions on permit applications as provided by the Federal regulations. PA 86.39(b)(1) and (2)(i) are no less effective than 30 CFR 786.23(b)(1)(i), which establishes decision-making time frames for permit issuance in initiating the regulatory program, and 30 CFR 786.23(b)(1)(ii) and (2)(i), which require a decision within 60 days after an informal conference has been held on the application. In addition, PA 86.39(b)(2)(ii) establishes criteria no less effective than 30 CFR 786.23(b)(ii) for the time frame for decisions on permit applications for which no informal conference has been held during subsequent operation of the program.

46. EPI *et al.* commented that PA 86.47 does not contain requirements regarding the obligations of the permittee to prevent or correct actions not in compliance with the permit that are damaging to the environment or public health, including the use of alternative methods for compliance. The Secretary disagrees with this comment. The provisions of PA 86.36, 86.37, and 86.41 are no less effective than the requirements of 30 CFR 786.29 (a) and (c) regarding permit conditions.

47. PCMA *et al.* pointed out that deletion of PA 86.42(2), which required disposal of solids, sludge, filter backwash, or pollutants as specified in PA Chapters 87, 89 and 90 and other applicable State or Federal laws, removes a redundant requirement and does not make the Pennsylvania regulations less effective than the Federal requirements. The Secretary agrees and finds that the pertinent provisions of PA Chapters 75, 87, 88, 89, and 90 are no less effective than 30 CFR 786.29(b).

48. EPI *et al.* commented that unlike 30 CFR 788.11(a), PA 86.51 does not require the regulatory authority to review permits before the middle of their permit term. In this instance, the Secretary

finds that the timing of the mid-term review should be left to the discretion of the regulatory authority. The reasons for this are (1) a permit will have to be reviewed every year or two for the most part due to Pennsylvania's incremental bonding provisions, and (2) some part of the mid-term review of permits will be an ongoing process through inspections and other monitoring and compliance activities. Furthermore, PA 86.51(a) provides that the regulatory authority is to review each outstanding permit at least once during its term in accordance with Section 511(c) of SMCRA.

49. PCMA *et al.* commented that PA 86.51(a), which requires the regulatory authority to review each outstanding permit at least once during its term is in accordance with Section 511(c) of SMCRA. The Secretary agrees with this comment and finds that PA 86.51(a) is no less effective than 30 CFR 788.11(a).

50. PCMA *et al.* commented that PA 86.51(b) does not require a the regulatory authority to send the permittee a copy of decisions to require modification or revision to permits resulting from periodic reviews conducted by the Pennsylvania DER. The Secretary finds that the omission of this directive language would not make the Pennsylvania regulations less effective than 30 CFR 788.11(c). Since actions of the Pennsylvania DER, including orders to modify or revise a permit, are subject to appeal through the Pennsylvania Environmental Quality Board, such actions must be based on written findings and must be served to the party or parties involved (Administrative Record No. PA 292, *Pennsylvania Coal Mining Regulatory Program*; p. 300-315). In addition, PA 86.39, particularly PA 86.39(b), requires that the DER issue notices to the applicant of all decisions relating to permits.

51. PCMA *et al.* commented that PA 86.54(a) adequately provides for public notice of permit revision requests in a manner no less effective than 30 CFR 788.14(b). The Secretary agrees with this comment and has approved this provision in the Pennsylvania regulations.

52. The FWS commented that the Pennsylvania DER lacks adequate expertise for reviewing the fish and wildlife aspects of permit applications. The commenter expressed specific concern about the proposed arrangement with the Pennsylvania Game Commission in that it limits its review responsibility to resources on State game lands. The Secretary cannot impose requirements on agencies external to the regulatory authority and,

thus, cannot require the Game Commission to increase the scope of its review functions. The Pennsylvania Fish Commission and the FWS commented that the proposed Memorandum of Understanding between the Fish Commission and Pennsylvania DER must be formalized prior to the Secretary's approval of the Commonwealth's program. The Secretary cannot require Pennsylvania to enter into formal agreements, but applauds the Commonwealth's intention to do so. Furthermore, concern that adverse impacts upon aquatic resources may result should be alleviated by the fact that the permitting requirements in PA Chapter 86, Subchapter B prohibit approvals of permit applications by the Pennsylvania DER which will result in such impacts.

53. EPI *et al.* commented that the introductory bracket in PA 86.56(d) regarding transfer of permits has been omitted. The Secretary agrees the introductory bracket deleting 86.65(d) had been omitted; however, the Secretary finds that Pennsylvania has corrected this omission.

III. Performance Standards

1. EPI *et al.* commented that the Pennsylvania program omits the specific standards of 30 CFR 816.14 and 816.15 for temporary and permanent seals on drilled holes. In pointing out the deletion of PA 87.94 and 87.95, the commenter failed to consider the provisions of PA 87.93, 87.158, 87.173, 89.54, 89.68, 89.83, 90.93 and 90.168, which contain provisions that duplicate those of the deleted passages. The Secretary finds the provisions retained in the Commonwealth's proposed program adequate, since they form a significant body of direction for operators of mines in the Commonwealth for the management and the ultimate closure of openings to mines, including drilled holes and are therefore no less effective than 30 CFR 816.14 and 816.15.

2. EPI *et al.* stated that PA 87.96 fails to satisfy the requirement contained in 30 CFR 816.21(b) that all topsoil be immediately redistributed or stockpiled. 30 CFR 816.21(b) cross-references specific requirements for redistribution and stockpiling of topsoil, 30 CFR 816.24 and 816.23, respectively. As PA 87.99 and 87.98 contain requirements no less effective than those in 30 CFR 816.24 and 816.23, the Secretary does not find the lack of a cross-reference in PA 87.96 to be of concern.

3. The SCS suggested several editorial amendments to clarify the requirements in PA 87.97 (b), (e) and (f) regarding topsoil removal. The Secretary believes that while these amendments may serve

to clarify the provisions, they cannot be required since PA 87.97 is no less effective than 30 CFR 816.22.

4. EPI *et al.* contended that PA 87.97 fails to provide for limitations on removal of topsoil or vegetative material where air or water pollution may be attendant, and that this is inconsistent with 30 CFR 816.22(f). The Secretary disagrees with this contention. PA 87.97(b) and Chapter 102 establishes limits on the size of disturbances and the area from which topsoil will be removed and allows the DER to require other measures in an effort to prevent erosion which may cause air or water pollution in a manner no less effective than the provisions of 30 CFR 816.22(f).

5. The SCS recommended adding specifications to PA 87.98 regarding cover for and mulching of topsoil storage areas. Also, they recommended amending PA 87.99 to require an erosion control plan for topsoil redistribution. The Secretary finds that PA 87.98 and 87.99, in conjunction with the mulching and erosion control provisions contained in PA 87.146 and 87.153, are no less effective than 30 CFR 816.23 and 816.24.

6. The SCS recommended topsoil disking or harrowing to a depth of four inches prior to seeding as opposed to the three inch depth required in PA 87.152. The SCS provided no justification for increasing the depth, and no equivalent requirement exists in the Federal rules. The Secretary finds the Pennsylvania requirement no less effective than 30 CFR 816.24(a), and can therefore not require modification of the provision.

7. EPI *et al.* expressed concern that the omission in PA 87.100 of the requirement to have qualified laboratories perform soil tests as set out at 30 CFR 816.25 may result in having unqualified persons conducting the tests. PCMA *et al.* commented that the omission did not lessen the effectiveness of PA 87.100 in providing for adequate soils information. As allowed and required by 30 CFR 816.25, DER is stipulating the use of standard methods such as those established by SCS and EPA in performing all soil tests. Since soil testing is likely to be a major activity of most of the labs which would be used to perform the tests, qualified personnel such as agronomists and soil scientists would be employed. As a result, the Secretary finds that the established control of a required standard testing methodology alone is no less effective than the Federal requirement and the qualification process would provide little additional protection to ensure the validity or accuracy of the test results.

8. The SCS suggested modifications and the addition of specifications to PA 87.100 (c) and (d) regarding topsoil amendments and nutrients. As 30 CFR 816.25 contains no comparable provisions, the Secretary cannot require the Commonwealth to adopt these suggestions.

9. The Pennsylvania Chapter of the National Association of Water Companies *et al.* commented that "high quality" stream protection should be improved and that additional protection should be provided those areas of lesser quality. Also, it suggested limiting cumulative mining disturbance on high quality watersheds and application of cumulative discharge criterion to all acreage, as opposed to just the disturbed acreage. Review of PA 86.102, 87.101, and Chapter 93 reveal that PA 86.102 and 87.101 are no less effective than the Federal counterpart, 30 CFR 816.41, *et seq.* Also, if the operator is unable to separate disturbed and undisturbed watershed runoff, he will be responsible for assuring the discharge meets applicable standards. Since Pennsylvania statutes and regulations provide for protection of the hydrologic balance and cumulative assessment in the same manner as required by OSM and EPA, the Secretary is not empowered to condition program approval upon inclusion of additional restrictions for quality streams.

10. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended that sedimentation control restrictions limit additional loading of a receiving water resource to no more than 5 NTUs (nephelometric turbidity units) above baseline loadings and that a maximum discharge standard of 50 NTUs be applied where downstream public water systems were involved. PA Chapter 93 provides for limitations of turbidity for discharge to streams with protected uses such as domestic, industrial or other water supplies, although not necessarily to the levels suggested by the commenter. The Secretary finds that the Pennsylvania program parallels 30 CFR 816.42, *et seq.* in applying effluent limits and drainage controls, and therefore cannot require addition of this parameter.

11. The SCS recommended changes to the listing of average rainfall levels for the 10-year, 24-hour precipitation event performance standard for one county in western Pennsylvania as set forth in PA 87.103(b) and for several counties in the anthracite region as set forth in PA 88.293(b). These rainfall values are set forth by Pennsylvania as required by 30 CFR 816.42 and 817.42 for the OSM

rainfall exemption. The Secretary finds that there is no legal basis under SMCRA to require the adoption of higher rainfall amounts for the anthracite mining counties listed by the commenter. Section 529 of SMCRA provides that only certain requirements of the Act be adopted relative to surface and underground coal mining and reclamation operations extracting anthracite coal. Specifically, anthracite mining operations are exempted from the performance standards of Sections 515 and 516 of SMCRA. The rainfall value for the remaining county in western Pennsylvania (Blair) was suggested to be revised downward by two-tenths of an inch. The Secretary finds that the higher value provided by PA 87.103(b) is no less effective than that required under Federal requirements and in accordance with Section 505(b) of SMCRA.

12. PCMA *et al.* noted that the "Catastrophic Storm Exemption" in PA 87.103, 89.83 (now 89.53), and 90.103 was premised upon the construction and maintenance of "a basin to treat a 10-year, 24-hour storm flow." The commenter further noted that the Pennsylvania requirement to provide 7,000 cubic feet of basin capacity for each acre of watershed is "close to a basin that can contain all the flow off the area from a 10-year, 24-hour storm." The commenter appears to be drawing a parallel between the sediment storage requirement in PA 102.13(d) plus the Catastrophic Storm Exemptions of Chapters 87, 89, and 90, and the rainfall exemption of EPA—e.g., comparing the requirement of the EPA/OSM rainfall exemption that the pond must be designed, constructed, maintained and operated to contain or treat the 10-year, 24-hour rainfall to Pennsylvania's required 7,000 cubic foot per acre storage requirement. The Secretary finds that an average value for a 10-year, 24-hour storm in Pennsylvania would be approximately 4.0 inches of rainfall, and utilizing an SCS rainfall/runoff conversion method assuming a Runoff Curve Number of 70, the runoff attributable to this storm would be 1.33 inches, or 4,828 cubic feet per acre. The Secretary agrees that this value appears "close" to the 7,000 cubic foot per acre standard of PA Chapter 102, although the results could vary with site specific conditions such as large percentages of a watershed being disturbed or higher rainfall values. The Pennsylvania standard would also allow 2,172 cubic feet/acre of sediment storage (0.050 acre-feet/acre) beyond the 10-year stormwater storage for the example stated above. The Secretary finds

further, that adhering to the requirements of PA 102.13(d) should always provide 5,000 cubic feet/acre of stormwater storage, since cleanout of ponds is required when available storage in sediment basins reaches 2,000 cubic feet/acre. Therefore, the Secretary agrees with the commenter's statement that Pennsylvania requirements are similar to some of the design requirements of the EPA/OSM rainfall exemption (30 CFR 816.42), provided the invert of the outlet(s) is at or above the maximum storage level required. The operator would still be required to demonstrate that the basin was constructed and maintained in accord with the permit in order to qualify for the EPA/OSM exemption; however, as discussed below, qualification for the EPA exemption becomes a moot point since the Pennsylvania requirements would supercede those of EPA/OSM.

The commenters further stated that the Pennsylvania "Catastrophic Storm Exemption" is an "unrealistic, extremely expensive burden" which has not been required by either EPA or OSM. The commenter pointed out that the exemption required actual occurrence of the 10-year, 24-hour precipitation event before an operator might be granted relief from meeting effluent standards; whereas, the OSM/EPA rainfall exemption was intended for any precipitation event—subject to demonstration that the pond or treatment facility had been designed, constructed and maintained to contain or treat the 10-year, 24-hour rainfall. The commenter's statements do not, however, accurately reflect the precise language of the "Catastrophic Storm Exemption" in PA 87.103, 88.93, 89.53, and 90.103. The Pennsylvania rules state that the 10-year, 24-hour storm event must have been exceeded to allow consideration of qualification for the exemption. Nonetheless, the commenter's contention that Pennsylvania requirements exceed those promulgated by OSM and EPA is correct. This does not, however, constitute an inconsistency with OSM permanent program rules at 30 CFR 816.42, 816.46, 817.42 and 817.46 or EPA regulations (40 CFR 434) as provided by Section 505(b) of SMCRA.

13. The SCS stated that PA 87.108(d)(1) should specify the method for determining that a drainage area is "small." Pennsylvania deleted this provision in the amended version of the Pennsylvania rules (Administrative Record No. PA 336). In PA 87.108(a), Pennsylvania only requires the permittee to demonstrate that ponds are not necessary to achieve the effluent

standards of PA 87.102. EPI *et al.* found the omission of the "small" drainage area provision for exemptions from sediment pond requirements objectionable. The Secretary finds the demonstration that sediment ponds are not necessary to meet effluent standards is the critical test for approving sediment pond exemptions. The use of the term "small" without qualification is subjective and secondary to this demonstration. In some instances, due to site-specific factors, it is possible that no surface runoff will leave the permitted area or enter a receiving stream. Inasmuch as the ultimate goal of SMCRA is to meet performance standards and the Pennsylvania regulations require achievement or effluent limits, the Secretary finds the Pennsylvania requirement no less effective than 30 CFR 816.42(a)(3)(A).

14. EPI *et al.* stated that PA 87.108 and 90.108 provide a waiver from the requirements for sediment ponds in violation of 30 CFR 816.42. The commenters also charged that the waiver is "inconsistent with Federal law" since OSM has determined sediment ponds to be the best technology currently available (BTCA) and section 515(b)(10) of SMCRA requires use of BTCA. The Secretary disagrees that this waiver is less effective than that provided by 30 CFR 816.42(a)(3). PA 87.108(a) and 90.108(a) grant waivers only if the permittee can successfully demonstrate that a sedimentation pond is not required to meet effluent standards of PA 87.102, which incorporates receiving stream standards of PA Chapter 93. The only divergence of Pennsylvania requirements in PA 87.108 and 90.108 from 30 CFR 816.42(a)(3) is the absence of the qualifier that the drainage area of the permit portion to be exempted from the sediment pond requirement be "small". As discussed in response to comment III.14 above, the Secretary finds this deletion no less effective than the Federal counterparts.

15. The SCS commented that the 70 milligrams per liter standard for total suspended solids of PA 87.102(a)(4) was not practicable. The Secretary finds this requirement is the same as 30 CFR 816.42(a)(7), which establishes the same standard.

16. EPI *et al.* commented that PA 87.102 fails to provide for effluent limitations as effective as the limits imposed by 30 CFR 816.42(a)(7). While PA 87.102(a) does not contain the "average of daily values for 30 consecutive discharge days" effluent parameters, the Secretary finds that PA 87.102(b), with the incorporation of the

NPDES standards and other provisions governing the effluent parameters contained in PA Chapters 91, 92, 93, 95, 97, 101 and 102, is not less effective than 30 CFR 816.42(a)(7).

17. The SCS recommended that PA 87.105(b)(1) through (3) should include the SCS Standard and Specifications: *Diversions* (PA-SCS Number 362), *Grassed Waterways* (PA-SCS Number 412), and *Lined Waterways* (PA-SCS Number 468). The Secretary finds PA 87.105(b) (1) through (3) no less effective than 30 CFR 816.43 (a), (b) and (d) as guides for the construction of diversions. Therefore, while the use of these guidelines may extend the integrity of the Pennsylvania requirements, the Secretary cannot require the Commonwealth to use them.

18. EPI *et al.* commented that PA 87.105 and PA 90.104 fail to contain the channel protection, freeboard, energy dissipator and excess excavation material disposal standards for overland diversions as required by 30 CFR 816.43(f). The Secretary finds that the energy dissipation and excess excavation disposal requirements are contained in PA 87.109 and 87.105(f), respectively. PA 87.105(b) and 90.104(b) state that "Diversions shall be designed, constructed and maintained using current engineering practices * * *". The use of the phrase "current engineering practices" dictates that adequate freeboard and proper channel linings along with numerous additional safeguards be utilized by the permittee in design, construction and maintenance. Consequently, the Secretary finds that the diversion design requirements of PA 87.105(b) and 90.104(b) are no less effective than the Federal standards.

19. EPI *et al.* contended that while PA 87.104(b)(2) and 90.105(b)(2) required that the combination of channel, bank and flood plain configuration of stream diversions be adequate to prevent flooding potential greater than that of the natural existing channel, it was less effective than 30 CFR 816.44(b)(2) which specified design storm capacities. The commenters felt that it would be difficult for the regulatory authority to enforce this provision because of the necessity of comparing diversion channels to natural channels. The commenters suggest requiring the operator to demonstrate the capacity of the natural channel so that it could be compared to the proposed diversion. The Secretary disagrees with the commenter's interpretation of the Pennsylvania rule. The Secretary finds that the language of PA 87.104(b)(2) and 90.105(b)(2) intends that the

responsibility for demonstrating that the diversion channel prevents flooding to the same degree as the natural channel lies with the operator, not the regulatory authority. This is further clarified when the requirements of PA Chapter 105 are considered. PA 105.231(a), which must be adhered to by the permittee in the diversion of any stream, contains specific requirements for descriptions of existing and proposed channel configurations, flood flows, etc. Therefore, the Secretary finds PA 87.104(b)(2) and 90.105(b)(2) no less effective than 30 CFR 816.44(b)(2).

20. EPI *et al.* commented that PA 87.104(d)(2) and 90.105(d)(2) omitted the requirements that the stream channel be restored to its naturally meandering shape as required by 30 CFR 816.44(d)(2); but instead, required that the horizontal alignment of the stream be restored to a condition compatible with the protected water use of PA Chapter 93. The commenter contended that this is less effective than Federal provisions. The Secretary disagrees that this provision is less effective. Restoration to a natural meandering shape is not the most environmentally satisfactory solution. For example, management of trout or other fish species may be more effectively accomplished with planned stream modification (gabions, deflectors, splashdams, streamside vegetation, etc.) than with the original meandering stream configuration. Consequently, the Secretary finds that tying stream restoration to the various water uses of PA Chapter 93 is no less effective than the Federal requirement, particularly when viewed in tandem with PA Chapter 105, stream modification and environmental protection requirements.

21. The SCS suggested modifying PA 87.106(a)(3) to establish a minimum erosion control standard of 5 tons per acre per year. The Secretary disagrees inasmuch as the Pennsylvania provision contains the same standards to measure the appropriateness of sediment control measures, i.e. to minimize erosion to the maximum extent possible, as required by 30 CFR 816.45(a)(3).

22. POMA *et al.* stated that the lack of design criteria comparable to 30 CFR 816/817.46 in PA 87.111, 87.112, PA 89.111, 89.112, 89.113 (now deleted), PA 90.111, and 90.112 does not render the Pennsylvania program less effective than the OSM regulations. The commenter contended further that PA 87.111 (2) and (5) provide for stability of impoundments, protection of the hydrologic balance and prevention of spontaneous combustion no less effectively than the top width, slope,

foundation preparation, and unsuitable fill requirements of 30 CFR 816/817.46 (l), (m), (n) and (o), respectively. Inasmuch as PA 87.112(b), 89.112 and 90.112(b) adopt SCS standards as guidelines or criteria, (except as discussed in Finding 13.3, above), and since SCS PA *Pond Standard 378* contains top width criteria, slope requirements, foundation preparation standards, and unsuitable fill provisions, the Secretary agrees that these provisions are no less effective than federal counterparts in providing for the omissions referenced by the commenters. "The imposition of design criteria", they further commented, "in this instance would destroy OSM's newly promulgated 'state window'" 47 FR 53376. The Secretary finds, however, that section 15(b)(8)(B) of SMCRA requires any permanent impoundment to achieve stability consistent with structures constructed by the SCS. The standards of the SCS in impoundment design and construction are contained in the publications *TR 60* and *Pond Standard 378* (See discussion in Finding 13.3 above.)

23. The SCS recommended that the following language be added to PA 87.109 include the sentence: "Peak discharge at any one outlet during and after mining will not exceed the peak discharge at that point prior to mining." The Secretary disagrees with this recommendation. Since the requirements of PA 87.109 are no less effective than 30 CFR 816.47, no additional changes are required of the Commonwealth. If the concern of the commenter is discharge quantity, it is adequately addressed in PA 87.101(a) and (b).

24. PCMA *et al.* commented that PA 87.110 regarding the handling of acid-forming and toxic-forming spoil is as effective as 30 CFR 816.48(c). The Secretary agrees with the commenter and has approved the Pennsylvania provision.

25. EPI *et al.* responded that PA 87.111 and 90.111 fail to require adherence to design standards for permanent and temporary impoundments as contained in 30 CFR 816.49(a). The Secretary agrees with this comment in part. The Secretary finds that the requirements of PA 87.111, 87.112, 90.111 and 90.112 are no less effective than 30 CFR 816.49(a)(1)-(7) with the exception of 30 CFR 816.49(a)(5) which incorporates SCS design standards by reference. The Secretary has required modification of the program to contain such standards and has conditioned the program accordingly. (See Finding 13.3 above.)

26. EPI *et al.* cited the omission of permanent and temporary impoundment requirements similar to 30 CFR 817.49(e)-(i) in PA 89.91. Pennsylvania's amended rules (Administrative Record No. 336) now contain provisions correcting the earlier omissions as follows:

a. The revegetation and erosion control requirements of PA Chapter 102, PA Chapter 105, PA Pond Standard 378, TR 60 and PA 89.112(a)(1) are no less effective than 30 CFR 817.49(e).

b. Analogues to the Federal routine inspection standards of 30 CFR 817.49(f) can be found in PA 89.101(c) and in PA 89.112(a)(3).

c. A description of maintenance provisions no less effective than 30 CFR 817.49(g) are required in PA 89.102(a)(5) in addition to the requirements contained in PA Chapter 105, PA Pond Standard 378 and TR-60 which have been adopted by reference.

d. Standards equivalent to 30 CFR 817.49(h) for certification and reporting requirements are found in PA Chapter 105 and PA 89.101(b).

e. PA 89.112(a)(4) and PA Chapter 105 are no less effective than 30 CFR 817.49(i) in requiring regulatory authority approval of plans for any reconstruction, modification, enlargement or reduction in size prior to actual construction.

27. EPI *et al.* commented that the deletion of PA 87.114 resulted in the omission of specific standards for protecting groundwater which appear at 30 CFR 816.50. The Secretary has concluded that the deletion of PA 87.114 does not detract from the groundwater protection provisions of the Pennsylvania program. The omitted provisions are redundant with requirements set forth in PA 87.110 for handling and disposing of acid-forming and toxic-forming spoil; in PA 87.131 for handling and disposing of excess spoil; in PA 87.136 for disposal of non-coal wastes; and in PA 87.141 through PA 87.145 for backfilling and grading. The Secretary finds the deletions have not made the Pennsylvania regulations any less effective than the Federal provisions.

28. The FWS commented that the requirements may be too narrow in both PA 87.115 for recharge capacity and in PA 88.330 and 90.158 for revegetation of areas having a postmining land use of pasture or land occasionally cut for hay to consist of herbaceous plants having a minimum of 70% areal coverage. In particular, the FWS was concerned that the watershed may be adversely affected by this type of cover in areas which were formerly forested and the post-mining pastures and hayfields are

extensive. The Secretary disagrees with this comment as PA 87.115 is no less effective than the requirements for maintaining recharge capacity found in 30 CFR 816.51. The Secretary further finds the Pennsylvania program as effective as Federal requirements for maintaining the hydrologic balance with respect to quantity of flows in watersheds. PA 90.158 also provides standards for successful revegetation which are no less effective than 30 CFR 816.116 and 816.117. Furthermore, since postmining land uses must be approved by the Pennsylvania DER, it may require a more diverse mixture of plants, such as woody species, to assure maximum protection of the watershed. The provisions of PA 88.330 are acceptable in that Section 529 of SMCRA provides that state performance standards for anthracite mining in effect on August 3, 1977, can be adopted in lieu of the SMCRA provisions of Sections 515, 516 and portions of Sections 509 and 519 relating to specified bond limits and period of revegetation responsibility.

29. EPI *et al.* stated that PA 87.117 fails to require notice of non-compliance and quarterly reports pertaining to water quality as set forth in 30 CFR 816.52(b). The Secretary agrees that the specific language of 30 CFR 816.52(b)(ii-iii) is not contained within PA 87.117, but finds that these provisions are established through PA Chapter 92, Pennsylvania's NPDES permitting and monitoring requirements.

30. PCMA *et al.* commented that PA 87.118 regarding transfer of wells provides for liability for damage as effectively as 30 CFR 816.53(c). The Secretary does not believe that the language in PA 87.118 alone is sufficient, but when read in conjunction with PA 86.57 which assures that the transferor is secondarily liable for damages, the Pennsylvania sections are no less effective than 30 CFR 816.53(c).

31. The FWS commented that PA 86.102(1) should require consideration of comments by other agencies, over and above the Pennsylvania Fish Commission, in acting on variance requests for mining within 100 feet horizontally measured from a perennial or intermittent stream. A more careful reading of PA 86.102(1) shows that it provides for consideration of all comments received from other agencies or interested persons during the public comment period or the public hearing, if one is requested, by the Pennsylvania DER before issuing such a variance. The Secretary, therefore, finds that PA 86.102(1) is no less effective than 30 CFR 816/817. 57 *et seq.* and does not require any correction.

32. EPI *et al.* stated that Pennsylvania omitted the buffer zone requirements of 30 CFR 816.57 in its program submission. The Pennsylvania requirements analogous to the Federal requirements for stream buffer zones are found at PA 86.102(1) which prohibits or limits mining within 100 feet measured horizontally of the bank of a perennial or intermittent stream, and PA 87.104 which establishes stream protection standards. The Pennsylvania requirements are no less effective than 30 CFR 816.57.

33. EPI *et al.* commented that PA 87.123 fails to require utilization of the best appropriate technology to maintain environmental integrity in its requirement that surface mining activities be conducted to maximize coal recovery as required by 30 CFR 816.59. The Secretary does not consider the omission of the phrase "utilizing the best technology currently available" a deficiency in PA 87.123. The intent, as set forth in PA 87.1, Section 4(a)(2)(k) of PASMCR, Section 315(e) of TCSL and Section 5(d) of CRDCA, is still maintained in accordance with Section 515(b)(1) of SMCRA.

34. PCMA *et al.* commented that PA 87.125(a) is as effective as 30 CFR 816.62(a) by limiting the preblast survey to a one-half mile radius of the blasting area. The Secretary agrees, and finds that PA 87.125(a), as amended, is no less effective than 30 CFR 816.62(a).

35. PCMA *et al.* stated that PA 87.126, with respect to aggregate blasting periods, is consistent with 30 CFR 816.64(b)(2)(ii) and therefore, must be approved. The commenter pointed to OSM proposed rulemaking (47 FR 12764) which indicates that the 4-hour aggregate restriction is "not necessarily applicable in all areas." The Secretary agrees, and finds that PA 87.126 is no less effective than 30 CFR 816.64.

36. EPI *et al.* commented on two provisions relating to blasting. First, the commenter contended that PA 87.127(g), now PA 87.127(f), failed to prohibit blasting within 500 feet of certain facilities as required by 30 CFR 816.65(f)(2); and, secondly, that PA 87.127(i), now PA 87.127(h), uses a peak particle velocity of two (2) inches per second rather than one (1) inch per second as prescribed by 30 CFR 816.65(i). On the first point, the Secretary finds that the provisions of 30 CFR 816.65(f) were remanded on May 16, 1980, by the District of Columbia District Court in *In Re: Permanent Surface Mining Regulation Litigation* Civil Action No. 79-1144. Also, the notice of suspension for this provision by the Secretary appeared in the Federal

Register on August 4, 1980 (45 FR 51547-51550). Therefore, the Secretary can not require that these provisions be included. In regard to the second point, the Secretary finds that Pennsylvania has corrected the maximum peak particle velocity requirement in PA 87.127(h) to be no less effective than 30 CFR 816.65(i) (Administrative Record No. PA 321). In addition, the provisions of PA 87.127(j) for scale distance formula has been revised from $W = (D/50)^2$ to conform with the lowered peak particle velocity requirement.

37. EPI *et al.* stated that PA 87.133 did not contain the head-of-hollow fill provisions of 30 CFR 816.73; and, inferred that Pennsylvania had not provided standards as effective as the Federal rules. Pennsylvania regulations omitted the rock-core drainage control alternative for head-of-hollow excess spoil disposal sites, although the remainder of PA 87.131 through 87.134 was no less effective than 30 CFR 816.71 through 816.74. The amended version of the Pennsylvania regulations (Administrative Record No. 336) contain excess spoil standards which deleted specific fill types, consolidating the general requirements with certain portions of durable rock, valley fill and head-of-hollow fill rules. Thus, as provided for in Section 505(b) of SMCRA, the omission of specific standards for head-of-hollow or durable rock fills is no less effective than the Federal provisions.

38. PCMA *et al.* stated that the provisions of PA 87.142(4) adequately address the diminution of water quantity resulting from the construction of other transportation facilities such as railroad spurs, sidings, and coal chutes. Also, the commenter believed that the general requirements of PA 87.114 and 87.115 provide adequate protection against water diminution. The Secretary agrees with this comment and finds the Pennsylvania provisions no less effective than 30 CFR 816.80.

39. EPI *et al.* stated that the Pennsylvania regulations do not contain the requirements of 30 CFR 816.81, including the placement of waste in approved disposal areas within the permit area. The Secretary disagrees with this comment. PA 90.122(a) specifically limits disposal areas to the permit area. Furthermore, it contains provisions regarding environmental protection, stability, prevention of combustion, and protection of public health, which are no less effective than 30 CFR 816.81.

40. EPI *et al.* commented that Pennsylvania coal waste disposal regulations do not contain requirements for subdrainage systems with the

alternative of demonstrating them to be unnecessary as provided by 30 CFR 816.83. The Secretary finds that underdrains are provided for in PA 90.122 (h) and (i) in a manner no less effective than 30 CFR 816.83.

41. EPI *et al.* commented that Pennsylvania omitted the standard contained in 30 CFR 816.87 for obtaining approval to remove burned coal waste (red dog) from disposal areas pursuant to a certified plan. Pennsylvania contends that removal of red dog for commercial use from a disposal site would constitute a surface mine operation and, therefore, would be controlled under the provisions of PA Chapters 86 and 87. If removed for non-commercial use, the regulations of PA Chapter 77 require conformance with SMCRA and the requirements of the regulations promulgated therefrom. If it is removed for disposal at another site, the provisions of PA Chapter 90 would apply. If the removal constituted a change in the terms of a permit, permit revision procedures in PA 86.52 would be involved in addition to PA Chapter 90 requirements which would remain in force. Therefore, the Secretary finds the Pennsylvania provisions for controlling burned coal waste utilization no less effective than 30 CFR 816.87.

42. EPI *et al.* stated that PA 87.113, 90.112 and 90.113 omit the site preparation criteria for coal processing waste dams and embankments required by 30 CFR 816.92. The Secretary agrees that a portion of these provisions are omitted from the cited sections, but disagrees that the requirements do not exist in the Pennsylvania program. As the commenter pointed out, part of the requirements are contained in PA 90.113(h). The commenters failed to consider the additional requirements of PA 90.122(r) which, when combined with the aforementioned section, are no less effective than 30 CFR 816.92 particularly since the Pennsylvania program jurisdiction for coal waste structures is universally applied through PA Chapter 90.

43. The FWS commented that the Pennsylvania regulations should define the term "enhancement of such (fish and wildlife) resources where practicable," as found in PA 87.138, 89.65, 89.82 and 90.150 and include an explanation of the hierarchy of land uses acceptable as postmining land uses to achieve a higher and better use, as allowed in PA 87.159(a). The Secretary finds the Pennsylvania regulations to be no less effective than 30 CFR 816.97 and 817.97 and not in need of further clarification or definition. The terminology used by Pennsylvania and OSM is state-of-the-art and should be recognized and

understood by professionals operating in the mining field.

44. The SCS recommended that "wildlife land" be used in place of "fish and wildlife habitat" wherever it occurs in PA 87.137 and 87.138 and that "fish and" be deleted wherever it precedes "wildlife." The Secretary finds that PA 87.137 is an inappropriate cite as it does not relate to fish and wildlife but the commenter accurately cited PA 87.138 in making this comment. Furthermore, the Secretary finds that such a change would be less effective than the provisions of 30 CFR 816.97 and not in accordance with Section 515 of SMCRA, wherein emphasis is placed on the protection of aquatic life as well as terrestrial animals.

45. PCMA *et al.* stated that PA 87.138(5) provides for the selection of plant species to be based on their uses as cover for fish. The Secretary finds that PA 87.138(6), as amended, is no less effective than 30 CFR 816.97(a)(9).

46. The Pennsylvania Fish Commission recommended that the term "critical habitat" be defined in Pennsylvania's regulations and be included in the provisions of PA 87.138(b), PA 89.65(b), PA 89.82(b) and PA 90.150(b). The Secretary disagrees with this comment and finds that the aforementioned provisions are no less effective than those contained in 30 CFR 701.5, 816.97(b) and 817.97(b). The U.S. Fish and Wildlife Service recommended that the term critical habitat be deleted from Pennsylvania's regulations because the identification of critical habitat is unworkable or counterproductive for certain species and has not been used (Administrative Record No. PA 320). According to the FWS, no critical habitats in Pennsylvania have been formally designated by the Federal government and none are likely to be. Also, it appears that 30 CFR 816.97(b) is improperly worded, since it is intended to require the reporting of the presence of threatened or endangered species, and not necessarily critical habitats. Furthermore, the Secretary finds that the concerns of the Pennsylvania Fish Commission, regarding the protection of critical habitats, are adequately provided for by PA 86.37(a)(15). This section of the Pennsylvania regulations prohibits the issuance of a permit if the mining activities would result in the destruction or adverse modification of critical habitats as determined under the Endangered Species Act of 1973 as set forth at 30 CFR 786.19. Therefore, no amendments to Pennsylvania's regulations are needed.

47. EPI *et al.* stated that PA 87.138(b) fails to require reporting of endangered

and threatened species as required by 30 CFR 816.97(b). The Secretary disagrees with this comment. PA 87.138(b) requires reporting of any plant or animal listed as threatened or endangered under State or Federal law to the Department when it is discovered during the course of the mining operation and has not been previously reported. The Secretary, therefore, finds the Pennsylvania provision no less effective than 30 CFR 816.97(b).

48. The FWS commented that PA 87.138(b), PA 89.65(b), PA 89.82(b) and PA 90.150(b) do not provide for reporting the presence of any threatened or endangered species in Pennsylvania in accordance with 30 CFR 816.97(b) and 817.97(b). The Secretary disagrees and finds that Pennsylvania amended its regulations (Administrative Record No. PA 336) to provide for reporting the presence of any threatened or endangered species which is no less effective than 30 CFR 816.97(b) and 817.97(b).

49. EPI *et al.* pointed out that PA 87.138(a) fails to provide protection for raptors in the construction of power lines and transmission facilities as afforded by 30 CFR 816.97(c). The Secretary agrees that this provision has been omitted from the Pennsylvania program, but points out that this provision would be meaningless because of the prevailing use of internal combustion powered units in surface mines in the Commonwealth.

Furthermore, PA 87.138(a)(1) provides that persons conducting surface mining activities must minimize disturbances and adverse impacts of activities on fish, wildlife and related environmental values. For long-term underground mines where electric power transmission lines and transformer or rectifier installations are common, PA 89.65(c) provides protection similar to 30 CFR 817.97(c). Therefore, PA 87.138(a) is no less effective than 30 CFR 816.97(c).

50. PCMA *et al.* concluded that PA 87.138(a)(7) prohibits the use of restricted or persistent pesticides on areas during surface mining and reclamation activities. The Secretary agrees with this comment and finds that PA 87.138(a)(5), as amended, is no less effective than 30 CFR 816.97(d)(1).

51. EPI *et al.* alleged that Pennsylvania does not provide for operator prevention, control and suppression of unapproved range, forest and coal fires to the extent required by 30 CFR 816.97(d)(8). The Secretary finds that collectively the Pennsylvania regulations pertaining to waste disposal plans, disposal of non-coal wastes, and fire control in PA 87.136, 87.145(a), 88.119(a)(2), 88.314(a), 88.321,

88.492(a)(4), 89.63, 89.39, 90.31(3), 90.126(a) and 90.133 are no less effective than the Federal requirement.

52. One commenter requested that the Secretary require amendment of PA 87.141(c)(2) to allow for pit lengths in excess of 3500 feet. The commenter presented arguments specifying why additional disturbance may be necessary to accommodate larger mining excavation equipment in situations similar to area type mining. The commenter outlined logistical problems which could prohibit cost-efficient mining operations, citing mandatory shorter pit lengths as the cause. The Secretary found, in reviewing the previous regulatory requirement submitted by DER to OSM for approval, that the commenters concern stemmed from the February 1981 version of PA 87.141 (13 *Pa. Bull.* 589) which provided a 3500-foot cap for open pits upon demonstration of appropriateness to the regulatory authority. Subsequent revision to the Pennsylvania requirements (Administrative Record No. PA 321) allows the regulatory authority to consider specific site conditions where pit lengths greater than 1500 feet may be needed. Thus, the commenter's concerns have been addressed, and inasmuch as PA 87.141 is found by the Secretary to be no less effective than 30 CFR 816.101, amendments of these provisions are not necessary.

53. PCMA *et al.* asserted that PA 87.141(c)(2) is a 'state window' provision "critical to Pennsylvania's operators." They further commented that the purpose of Federal requirements (30 CFR 816.101(a)(1)) is concurrent reclamation which they argued is adequately covered by the Pennsylvania provisions. The Secretary agrees with the commenter, and further finds that the consolidation of 30 CFR 816.101 requirements into the singular requirements of PA 87.141(c)(2) renders the Pennsylvania provision no less effective than 30 CFR Subchapter K.

54. PCMA *et al.* commented that PA 87.142, which permits alternatives to contouring on areas previously affected by mining, is consistent with 30 CFR 816.102(a). The Secretary agrees with this comment. PA 87.142 enumerates six conditions which must be met prior to approval of the contouring requirement alternatives. These conditions are no less effective than 30 CFR 816.102(a) in providing for alternatives to the contouring requirements where surface mining activities reffect previously mined lands.

55. PCMA *et al.* commented that while PA 87.144 does not contain specific terrace widths, it is no less effective

than 30 CFR 816.102(b). The commenter cited OSM proposals to modify 30 CFR 816.102(b) in the same manner (46 FR 39854) to insure greater safety, stability, and erosion control necessary to achieve postmining land use plans. The Secretary agrees with this comment and points out that 30 CFR 816.102(b) has been repromulgated to allow unspecified terrace widths where approved by the regulatory authority (47 FR 18553, April 29, 1982) for those reasons presented by the commenter.

56. EPI *et al.* commented that PA 87.143 impermissibly provides for variances to the approximate original contour (AOC) requirements for non-steep slopes in violation of Judge Flannery's decision (*In re: Permanent Surface Mining Regulation Litigation*, CA No. 79-1144, D.D.C. Feb. 16, 1978, slip op., p. 69-70). In this decision, Judge Flannery stated that Section 515(e) of SMCRA did not contain a general variance provision to the AOC requirements, but that the variance was limited to Section 515(d) steep slope mining operations. The Secretary agrees that Section 515(e) provides for only one variance, but believes that the entire section allows for general AOC variances. For a more complete discussion of the Section 515(e) of SMCRA variance to AOC requirements, see the preamble to the proposed rules for postmining land uses and variances from approximate original contour (47 FR 16153-16156, April 14, 1982). The Secretary, therefore, finds that PA 87.143 is consistent with Section 515(e) of SMCRA by allowing variance to AOC in non-steep slope mining operations. However, the Secretary finds that PA 87.143 does not contain any requirements for granting such variance; and, as a result, is not consistent with Sections 515(e) (1) and (3) of SMCRA which enumerate the requirements which must be fulfilled prior to granting of a variance by the regulatory authority. [See Finding 13.5, above.]

57. PCMA *et al.* commented that PA 87.143 adequately addressed the AOC variance requirements of 30 CFR 816.102(b). The Secretary agrees with this comment and finds PA 87.143 no less effective than 30 CFR 816.102(b). (See comment response III-55.)

58. The SCS contended that the small depressions addressed in PA 87.144(d) actually refer to diversions and waterways on backfilled areas and that such features should adhere to the design criteria of the SCS Standard and Specification, *Diversions* (Number 362). The Secretary finds that PA 87.144(d) provides for small depressions to be approved by the regulatory authority

with the same restrictions and considerations of 30 CFR 816.102(c), and thus cannot require the additional criteria proposed.

59. PCMA *et al.* commented that the specific prohibitions of 30 CFR 816.103(a)(4) are sufficiently incorporated in the general requirements of PA 87.101 and 87.145(1)-(3) regarding protection of streams and covering of acid and toxic forming materials. The Secretary agrees that the cited Pennsylvania provisions are no less effective than the Federal regulations when considered in conjunction with the provisions of PA 87.110, 87.131, 87.136 and 87.141 through 87.145.

60. EPI *et al.* objected to the omission in PA 87.145 of certain requirements of 30 CFR 816.103(a)(4) and (b) for handling and storage of acid and toxic forming materials. The Secretary's review of this provision, in conjunction with other similar provisions in the Pennsylvania program at PA 87.101, 87.102, 87.110, 87.116, and 87.117 reveals that the deleted portions merely eliminate redundant requirements and do not result in any less environmental protection. Therefore, considering the range of coverage of the Pennsylvania rules, the Secretary finds the Pennsylvania provisions to be no less effective than the Federal requirements in providing protection of surface and ground water.

61. PCMA *et al.* commented that it is unnecessary, costly and inefficient for the DER to approve the method and design specifications for compaction of materials when treating acid or toxic forming spoils. The commenters further asserted that PA 87.145(1), 87.110 and 86.37(2-3) and the general performance standards impose far more stringent handling and covering requirements than the portion of 30 CFR 816.103(a)(1) not suspended. The Secretary agrees with this comment and has approved these provisions.

62. The SCS stated that the depth of rills and gullies in PA 87.146 is a very approximate measure of effectiveness of stabilization and recommended that depth requirements be based upon the Universal Soil Loss Equation for sheet and rill erosion, or other equations for gully erosion. The SCS further recommended that if the soil loss of an area is found to exceed five tons per acre per year, the area should be reseeded. The Secretary finds that the Commonwealth provisions are no less effective than 30 CFR 816.106 and, therefore, requires no change or additional specifications.

63. In regard to PA 87.148, the SCS recommended mulching to provide a temporary cover if seeding is not

possible. Further, they stated that seeding dates for herbaceous species can be extended where mulch is used. The provisions of PA 87.153 requiring mulching to control erosion, promote germination of seeds and retain moisture are no less effective than 30 CFR 816.114. In regard to seeding dates, PA 87.148 specifies more precise time limitations for favorable planting of herbaceous and woody species than that in 30 CFR 816.113. The Secretary, therefore, finds that Pennsylvania has provided guidance which is no less effective than the Federal provisions.

64. The SCS recommended five changes to PA 87.153. These changes are: the inclusion of the Standard and Specification, *Mulching* (Number 484 PA-SCS) as guidance for mulching; a minimum mulch rate of two tons per acre without specifying the type of mulch as well as recommending that mulching be required; seeding within 10 days of topsoiling in PA 87.153(a)(1); a period for seeding to achieve quick vegetative cover within 30 days was recommended instead of "immediately" following final grading in PA 87.153(a)(3); and, anchoring of mulch was to be in all cases in PA 87.153(4)(b) except when approved by the Department. 30 CFR 816.114 was designed to be flexible and to provide the regulatory authority with latitude in applying innovative techniques to solve site specific problems (March 13, 1979, 44 FR 15234). The suggestions made by the commenter may result in too rigorous constraints and could limit the flexibility and discretion envisioned. The Secretary, therefore, finds the provisions of PA 87.153 to be no less effective than those of 30 CFR 816.114.

65. The SCS commented that the species rates and method of planting in PA 87.151(a) should be included in the revegetation plan. It further recommended including the SCS Standard and Specification, Critical Area Planting, Number 342PA-SCS in the Pennsylvania regulation to provide guidance for revegetation. The Secretary finds that PA 87.68(5) requires a plan for revegetation including species, rates and methods. In addition, PA 87.151(a) is no less effective than the Federal revegetation requirements as it merely requires that any seeding and planting be adequate to achieve the standards for successful revegetation established in PA 87.155 which are no less effective than 30 CFR 816.116.

66. The SCS recommended that the term "wildlife habitat" be changed to "wildlife land" in PA 87.155(b)(2)(iii). While "wildlife land" may be consistent with SCS land use classification terminology, the Secretary finds the

term "wildlife habitat" to be no less effective than 30 CFR 701.5 and 816.116.

67. EPI *et al.* contended that the Pennsylvania program omits certain specific requirements for periods of responsibility for revegetation success by mine operators and is inconsistent with SMCRA. The commenters cite the requirements of 30 CFR 816.116(b) and Section 515(b)(20) of SMCRA as being omitted. The Secretary notes that the deleted provisions duplicated those of PA 86.151, which set forth the periods of mine operator liability following establishment of successful revegetation and, therefore, finds the Pennsylvania provisions no less effective than 30 CFR 816.116(b).

68. EPI *et al.* commented that PA 87.155 allowed ground cover to be considerably less complete than is required by 30 CFR 816.116 and 816.117. Generally, the revegetation standards for ground cover contained in PA 87.155 are no less effective than those in 30 CFR 816.116. However, no reliable sampling technique is specified in PA 87.155. This is also true with PA 89.86(e) and PA 90.159. 30 CFR 816.116 requires that statistically valid sampling techniques be used which demonstrate a 90 percent statistical confidence level. However, since Pennsylvania has stated in its program (Administrative Record No. PA 336, page 40) that measurement techniques will be used to ensure a 90 percent statistical confidence, the Secretary finds that PA 87.155 is no less effective than 30 CFR 816.116.

69. PCMA *et al.* commented that Pennsylvania's haulroad regulations, PA 87.160 and 87.166, are as effective as the Federal regulations even though they do not contain design criteria. The Federal regulations on haulroads, 30 CFR 816.150-176 and 817.150-176, were remanded by the District Court in its May 16, 1980, opinion in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144) and the Secretary published a notice in the *Federal Register* on August 4, 1980, (45 FR 51547-51550) suspending the Federal haulroad regulations. Therefore, the Secretary cannot require that counterparts to the remanded Federal haulroad provisions be included in the Pennsylvania program. The commenter further stated that OSM should be encouraging DER to eliminate design standards wherever possible and substitute the basic performance standards of SMCRA throughout Pennsylvania's entire regulatory program. The Secretary cannot require a state to eliminate design criteria from its program unless they are less effective than the Federal requirements. As new

regulations are promulgated which substitute performance standards for design criteria, the States will be afforded an opportunity to amend their programs.

70. EPI *et al.* asserted that Pennsylvania totally revised PA Chapter 89, Underground Mining, and that this revision resulted in a wholesale departure from many of the specific standards in 30 CFR Parts 782 through 784 and 817. As a result, the commenter contended that more time was needed to review that Chapter and requested the Secretary to disapprove it in its entirety. The Secretary finds that PA Chapter 89, as amended on April 20, 1982 (Administrative Record No. PA 321) maintains the standards and requirements of the initial submission (Administrative Record No. PA 292). The content of this Chapter has merely been reorganized and consolidated in an effort to present a straightforward, logical approach and to reduce duplicative requirements within the Commonwealth's regulations. The Secretary believes that adequate time has been provided to review the amendments to PA Chapter 89, particularly in light of the fact that amendments to other PA Chapters were limited, and concludes that additional time is not necessary. Although the Secretary has determined that some minor deficiencies exist and has conditioned the program accordingly, the Chapter is otherwise no less effective than the Federal requirements (See Findings 13.6, 13.7, 14.9, 14.10, and 14.11, above).

71. EPI *et al.* commented that PA 89.73, now PA 89.83, failed to incorporate standards for casing and sealing underground openings as required by 30 CFR 817.13 through 817.15 and, that standards for the transfer of wells has been omitted. Taken together, PA 89.83, which establishes standards to prevent environmental damage, PA 89.54(c) which establishes safeguards to prevent discharge from underground mines, PA 89.81 and 89.68 which set forth requirements regarding the permanent and temporary cessation of operations, respectively, are no less effective than 30 CFR 817.13-15. The transfer of wells provisions of PA 86.57 are no less effective than 30 CFR 817.53.

72. EPI *et al.* commented that Pennsylvania omits standards for rehabilitation of sedimentation ponds, diversions, other impoundments and treatment facilities before abandonment as required by 30 CFR 817.56. Pennsylvania rules provide that permanent diversions for coal waste, excess spoil and for other areas will

fulfill these requirements in accordance with PA 90.120 and PA 105; that permanent impoundments must constantly be maintained to the design standards as required by PA 89.89(5); and, if treatment facilities are to be retained abandonment will not have occurred since bonding will be in force or operation of the facility will be the responsibility of the regulatory authority. The Secretary therefore finds these provisions no less effective than 30 CFR 817.56.

73. EPI *et al.* indicated an absence in the Pennsylvania regulations of standards for disposal of underground development waste as required in 30 CFR 817.71 through 817.74. A cross-reference to PA Chapter 90 is contained in PA 89.39. Underground development wastes are, by definition in PA 90.1, considered coal refuse. The handling of such materials and the related environmental protection standards are covered in PA 90.122 and PA 90.123 which specifically addresses the use of such waste in fills no less effectively than the Federal requirements.

74. EPI *et al.*, stated that the Pennsylvania regulations omit the requirement for contemporaneous reclamation as required by 30 CFR 817.100. The Secretary disagrees with this comment and finds that PA 89.84(b) and 89.86(c) are no less effective than 30 CFR 817.100 in that reclamation and revegetation are required in accordance with the timing of the reclamation plan approved by the regulatory authority.

75. EPI *et al.* commented that in PA 89.109, now PA 89.84, Pennsylvania omits many of the standards for backfilling and grading found in 30 CFR 817.101 through 817.103; particularly the requirement of 30 CFR 817.101(b) that areas affected by surface operations be returned to approximate original contour and the requirements of 30 CFR 817.103 for covering toxic materials. 30 CFR 817.101(b)(1), all of 30 CFR 817.102 and 30 CFR 817.103(a)(1) were remanded on May 16, 1980, by the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation*, (Civil Action No. 79-1144) and were suspended on August 4, 1980 (45 FR 51547-51550). The Secretary finds that PA 89.109 and PA 89.90 contain provisions no less effective than the remaining Federal requirements.

76. The FWS commented that PA 89.111(a)(1), now PA 89.86, does not require a diverse vegetative cover on areas disturbed by underground mining, as does 30 CFR 817.111. The Secretary has identified this deficiency in PA 89.86 and has conditioned the approval of the

program on correction of this issue [See Finding 13.8, above.]

77. EPI *et al.* commented that in PA 89.122(a), now PA 89.145(a)(1), Pennsylvania fails to require a regulatory authority determination based on detailed subsurface information of possible damage by subsidence before allowing mining near streams, impoundments or public buildings as required in 30 CFR 817.126 (a) and (c). The data requirements of PA 89.141, 89.142, and 89.143 provide the necessary subsurface information required by the Federal regulations to allow a determination by the regulatory authority. Furthermore, PA 89.145(g) specifically prohibits underground mining beneath areas not included in an approved subsidence control plan and PA 89.145(b) prohibits damage to structures unless consented to by both the owner and the DER. The Secretary finds these Pennsylvania regulations are no less effective than 30 CFR 817.126.

78. PCMA *et al.* commented that PA 87.176(d) requirements for plugging auger holes within 30 days is no less effective than 30 CFR 819.11(c) which requires plugging of an auger hole that discharges acid water within 72 hours. The Secretary agrees with the commenters. PA 87.176, in fact, prohibits auger mining if acid mine drainage is anticipated or actually occurs. Also, plugging is required regardless of water quality and variances from plugging are not allowed as in 30 CFR 819.11(d). Therefore, the Secretary finds the Pennsylvania requirement no less effective than the Federal provision.

79. The SCS recommended that surface water control structures be required on the backfilled area during the reclamation phase of mining to assure adequate erosion control, sedimentation control, and vegetation establishment. The SCS stated that it will require them in soil restoration plans for prime farmland under the provisions of PA 87.177(b). Adoption of SCS criteria for reclamation as contained in the SCS Standards and Specifications was also recommended for non-prime farmland as well as prime farmland. The Secretary finds that the Commonwealth's provisions under PA 87.177 and 87.178 are no less effective than those of 30 CFR 823.11, particularly since 30 CFR 823.11(c) has been suspended to the extent it required actual crop production to measure re-vegetation success on prime farmlands.

80. The Pennsylvania State University soil test recommendations were cited by the SCS as the recommended standard in applying soil amendments under provisions of PA 87.180(f). The Secretary

finds the Commonwealth's provision to be no less effective than 30 CFR 823.14(f), and has no authority to require this standard as a condition of program approval.

81. SCS recommended that prime farmland should not be required to be reclaimed to cropland in PA 87.181. SCS questioned the efficacy of cropland solely as a measure of proof of restoration. 30 CFR 823.15 (b) and (c) of the Federal program rules which address measures for determining the return of prime farmland to former cropland production were suspended. The amended version of PA 87.181 (Administrative Record No. PA 336) takes into account the alternative of not returning prime farmland solely to cropland while retaining measures to assure that the equivalent pre-mining cropland yield capability is achieved should such future use be selected. Therefore, the Secretary finds this provision to be no less effective than 30 CFR 823.15.

82. One commenter objected to Pennsylvania's submission of its anthracite regulatory program for approval, and stated that OSM does not require any changes in the anthracite program in order for Pennsylvania to be granted primacy. The Secretary disagrees with this comment. Congress did not exempt anthracite mining from all of the requirements of SMCRA. Section 529 of SMCRA specifically requires Pennsylvania to adopt all of the provisions of the SMCRA with respect to anthracite mining, except for Sections 515 and 516 and portions of Section 509 and 519. The provisions of Sections 509 and 519 of SMCRA are applicable except for the specified bond limits and period of revegetation responsibility. The Secretary has determined that, except as stated above, Pennsylvania must submit laws and regulations pertaining to anthracite coal mining operations which demonstrate that all of the applicable provisions of SMCRA will be enforced under the Commonwealth's permanent regulatory program.

83. The SCS inquired if it was the intent in PA 87.11(ii) to exempt the extraction of minerals other than coal from borrow pits for highway construction from the requirements of the Pennsylvania program. The Secretary finds that these activities are exempted under SMCRA; however, Pennsylvania will regulate them under its non-coal program. In relation to coal mining incidental to highway construction, see Finding 16, above.

84. The SCS suggested deletion or revision of several references in PA 87.111(a)(5) and 87.112(b). Pennsylvania

deleted these references in the amended version of the Pennsylvania rules. (Administrative Record No. 336). With this deletion, the Secretary believes that the commenter's concerns have been addressed.

85. PCMA *et al.* contended that PA 87.175 provides for variances from approximate original contour for steep slope operations in conformity with 30 CFR 826.15 and that the Commonwealth's rules, in fact, are more stringent than the Federal standards. The Secretary agrees with this contention and has approved the Pennsylvania rule.

IV. Inspection and Enforcement

1. The Pennsylvania Chapter of the Sierra Club commented that PA Chapter 86, Subchapter H does not include specific provisions for mandating a minimum frequency of inspection in accordance with Section 517(c) of SMCRA. As explained in the Pennsylvania program, Pennsylvania DER's Policy and Procedural Manual for the Bureau of Mining and Reclamation provides for both complete and partial inspections in accordance with Section 517(c) of SMCRA and consistent with 30 CFR 840.11 (Administrative Record Nos. PA 292 and 336). The Secretary finds that this provision is consistent with 30 CFR 840.11, and can be addressed by policy. Pennsylvania has been informed that since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to the policy will have to be formally processed as a program amendment in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

2. EPI *et al.* and the Pennsylvania Chapter of the Sierra Club stated that PA 86.213 fails to provide for suspension or revocation of permits consistent with 30 CFR 843.13. The Secretary agrees with this statement. As discussed in Finding 20.2, the Secretary has found that neither PA 86.213 nor Part 300-2.10 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provides for the suspension or revocation of permits based on a pattern of violations consistent with 30 CFR 843.13 and has conditioned approval of the program accordingly.

3. The Pennsylvania Chapter of the Sierra Club stated that PA Chapter 86, Subchapter H does not require that all inspection records and reports be available to the public and fails to provide citizens the right to informal review of enforcement actions. The Secretary disagrees with this comment. Consistent with 30 CFR 840.14 and Section 517(f) of SMCRA, PA 86.214

provides that all inspection records and reports are available for public inspection at appropriate DER district offices. The Secretary agrees that PA 86.215(d)(2) does not provide for a citizens right to informal review of enforcement actions as required by 30 CFR 842.15 and 840.15 and Section 517 (1) and (2) of SMCRA in its statutes or regulations. However, these provisions are provided by Pennsylvania DER in the Bureau of Mining and Reclamation's Policy and Procedure Manual, which is not in conflict with the Commonwealth's legal authority (Administrative Record No. PA 336, Page 1). Moreover, since the Secretary's decision in this regard is based on policy, any modification of this provision will require processing as a program amendment in accordance with 30 CFR 723.17 (Administrative Record No. PA 308).

4. PCMA *et al.* stated that PA 86.215(d)(2) provides for the informal review of enforcement actions as required by 30 CFR 840.15, 842.15 and Section 517(h) (1) and (2) of SMCRA. The Secretary disagrees with this statement. However, since the Bureau of Mining and Reclamation's Policy and Procedure manual has been modified to provide for informal review of enforcement actions, the Secretary finds that PA 86.215(d)(2), together with the policy provision, is consistent with 30 CFR 840.15 and 842.15.

5. The Pennsylvania Chapter of the Sierra Club concluded that PA Chapter 86, Subchapter H does not mandate cessation of operations when significant violations are detected. The Secretary disagrees with this comment and finds that PA 86.212, consistent with 30 CFR 843.11 and Section 521(a)(3) of SMCRA, requires DER to issue a cessation order whenever a violation exists which creates an imminent danger to the health of the public; is causing significant imminent harm to land, air or water resources; or will not be abated within an abatement period specified in a departmental order.

6. The Pennsylvania Chapter of the Sierra Club commented that PA Chapter 86, Subchapter H does not require inspectors to write every violation detected. The Secretary disagrees with this comment. PA 86.214 does require inspectors to write every violation detected and is consistent with 30 CFR 843.12.

7. EPI *et al.* commented that the Pennsylvania regulations do not require enforcement actions against operators for all violations of the program observed in accordance with 30 CFR 843.12 and Section 521(a)(3) of SMCRA. The Secretary disagrees with this

comment. Except as discussed in Findings 20.1 and 20.2, the Secretary finds that Section 4.3 of PSMCRA, Section 9 of CRDCA, Section 9 of BMSLCA and Section 610 of TCSL, in addition to PA 86.211, PA 86.214 and Part 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provide for the issuance of a notice of violation or cessation order upon observance of a violation. This interpretation of Pennsylvania law is further confirmed in the Attorney General's Opinion (Administrative Record No. PA 292, p. 9). Also, PA 86.212(a)(3) requires the issuance of a cessation order whenever a violation is not abated within the abatement period specified in a departmental order.

8. EPI *et al.* stated that the Pennsylvania regulations do not contain provisions regarding the inability to comply in accordance with 30 CFR 843.18. The Secretary disagrees with this comment. The Department of Environmental Resources' Policy and Procedure Manual prohibits the vacating of cessation orders or notices of violation because of the inability to comply (Administrative Record No. PA 336, p. 113). Since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to that policy will have to be formally processed as program amendments in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

9. PCMA *et al.* commented that PA 86.201(a) does not require the regulatory authority to serve a copy of the civil penalty assessment on the person responsible for the violation within 30 days of the issuance of the notice or order in accordance with 30 CFR 845.17(b) and Section 518(c) of SMCRA. The Secretary concurs with this comment. Although PA 86.201(a) does not specify the time limit in which the regulatory authority has to issue a civil penalty assessment notice, Part 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provides for the issuance of a civil penalty assessment notice within thirty days of the violation leading to the assessment in most cases. In some cases it may take longer than 30 days for the regulatory authority to evaluate the seriousness of the violation, and the good faith efforts of the operator to correct it and, accordingly, to determine the appropriate penalty. Therefore, the Secretary finds that PA 86.201(a), together with Part 300-2.8 of the Bureau of Mining and Reclamation's Policy and Procedure Manual, is consistent with 30 CFR 845.17(b).

10. EPI *et al.* commented that Subchapter G of Chapter 86 of the Pennsylvania regulations does not provide a rational scheme for the assessment of civil penalties. The Secretary disagrees with this comment. Section 11 of CRDCA, Section 18.4 of PSMCRA, Section 17(f) of BMSLCA, Section 605 of TCSL and PA 86.191 through PA 86.203 provide the legal authority for the assessment of civil penalties under the Pennsylvania program. Furthermore, a discussion of the proposed procedures for assessing and collecting civil penalties in Pennsylvania is provided in the Pennsylvania program (Administrative Record No. PA 292, *Pennsylvania Coal Mining Regulatory Program*, p. 46). Therefore, the Secretary finds that Pennsylvania's proposed system for the assessment of civil penalties is no less stringent than the requirements of SMCRA.

11. EPI *et al.* commented that the Pennsylvania laws do not provide for the assessment of civil penalties against corporate permittees as required by Sections 518 (f) and (i) of SMCRA. The Secretary disagrees with this comment. Section 3(n) of PSMCRA, Section 3(9) of CRDCA, Section 17(g) of BMSLCA and Section 1(g) of TCSL define the term "person" to include any natural person, partnership, association or corporation * * *. Furthermore, these sections provide that whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" does not exclude the members of an association and the directors, officers or agents of a corporation. Therefore, the Secretary finds that Section 18.4 of PSMCRA, Section 605 of TCSL, Section 11 of CRDCA and Section 17(f) of BMSLCA provide for the assessment of civil penalties against corporate permittees in accordance with Section 518 (f) and (i) of SMCRA.

12. EPI *et al.* commented that the Pennsylvania laws do not provide criminal sanctions against persons who knowingly make false statements or representations on records as required by Section 518 (g) and (i) of SMCRA. The Secretary finds that Section 18.6 of PSMCRA, Section 611 of TCSL, Section 17.1 of BMSLCA and Section 7 of CRDCA provide criminal sanctions against any person who knowingly makes false statements or representations in any application, record, etc. in accordance with Section 518 (g) and (i) of SMCRA.

13. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended the

establishment of an independent commission, funded through permit, royalty and civil penalty fee collection, to enforce the Pennsylvania program in lieu of the existing organization. The commenters further suggested that standard inspection checklist be modified to contain a detailed checklist of relevant performance standards—not just room for notations of compliance or non-compliance; and, that the inspection force be based upon one inspector per 1000 acres of permitted area. 30 CFR 732.15(b)(5)(b), (8) and (d) *et seq.* require the Secretary to evaluate any state regulatory program in light of the capabilities of the regulatory authority to carry out the provisions of the program consistent with the Federal counterparts, particularly Sections 517 and 521 of SMCRA. In addition, this evaluation is conducted by the Secretary through review of materials and information provided by the regulatory authority as specified in 30 CFR 731.14(j) and (g)(4). Section C of this notice illustrates that the Secretary has found the Commonwealth capable of enacting a system which fulfills the intent of SMCRA and the regulations promulgated thereunder. Implementation of the commenters' suggestions cannot, therefore, be required by the Secretary since the program approval process does not provide legal authority for circumvention of, or addition of provisions beyond those mandated by SMCRA and 30 CFR Chapter VII.

14. EPI *et al.* commented that Pennsylvania's inspection and enforcement policy statements, Appendix B of the program resubmission (Administrative record No. PA 336), were totally unacceptable because a policy statement is not binding on a state, and a state can not be compelled by a court order to follow it. The Secretary disagrees with this comment. Where the Secretary relies on a formal policy statement of a state as grounds for granting program approval that commitment is binding on the state and is an integral part of the state's program. Furthermore, in the event Pennsylvania does not comply with its inspection policy and the Secretary of Interior fails to act under Section 504(a) of SMCRA, any person can file suit under Section 520(a)(2) of SMCRA. Pennsylvania has been informed that any changes to policies upon which the Secretary relied in granting program approval will have to be formally processed as program amendments in accordance with 30 CFR 732.17 before they can become effective (Administrative Record No. PA 308).

V. Public Participation

1. EPI *et al.* commented that PA 86.215 fails to establish a time limit for responding to citizen complaints consistent with 30 CFR 842.12(d), and fails to provide for informal review consistent with 30 CFR 842.15. The Secretary disagrees with this comment. PA 86.215 is consistent with 30 CFR 842.12(d) by requiring that as soon as practicable after an inspection, the citizen will be notified of the department's enforcement action. Also, PA 86.215, together with the Bureau of Mining and Reclamation's Policy and Procedural Manual (Pennsylvania program, page 50), provide for a citizen's right to informal review of enforcement actions as required by 30 CFR 840.15, 842.15 and Section 517(h) (1) and (2) of SMCRA.

2. EPI *et al.* stated that Pennsylvania's regulations do not provide for public participation in enforcement of the state program in accordance with 30 CFR 840.15. The Secretary disagrees with this comment. Except as discussed in Finding 27.1, the Secretary finds that Pennsylvania's public participation provisions contained throughout the Pennsylvania surface mining laws, the regulations promulgated thereunder, Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual and Chapter III D of the Pennsylvania program narrative are consistent with those set forth in 30 CFR 840.15.

3. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended that the proposed regulations should allow for on-site inspections by water company officials based on "good faith circumstantial evidence or prima facie evidence". PA Chapter 86 provides for individual notice of mining permit applications to, and for review by, appropriate sewage or water treatment authorities and by government planning agencies with jurisdiction for land use, air and water quality planning in the area of the proposed operations. Submission of comments or objections received from these entities would be resolved prior to permit approval by the regulatory authority. Provisions are also included for informal conferences to hear comments or objections from parties whose interests may be affected, including water companies. The Secretary finds that sufficient allowances are provided in the Pennsylvania program for input from water companies in the permit review and approval process and, furthermore, citizen inspection procedures under PA 86.215 would be available to water

companies throughout the mining operation. Therefore, the Secretary finds that specific inspection provisions for water companies would be redundant.

4. The Pennsylvania Chapter of the Sierra Club and EPI *et al.* stated that PA Chapter 86, Subchapter H does not provide a citizen the right to accompany an inspector following a citizen's complaint. The Secretary disagrees with this comment. Section 18.3(b) of PASMCRRA, Section 13(b) of CRDCA, Section 13(c) of BMSLCA, Section 601(d) of TCSL and PA 86.215(c) provide persons who present information to the department relating to a possible violation the opportunity to accompany an inspector during an inspection in accordance with Section 521(a) of SMCRA and consistent with 30 CFR 786.27 and 842.12.

5. EPI *et al.* stated that the Pennsylvania program fails to provide for the award of costs and expenses including attorney fees for participation in administrative proceedings as required by Section 525(e) of SMCRA and 43 CFR 4.1290. The Secretary agrees with this comment. Section 307(b) of TCSL provides that costs and expenses including attorney fees can be awarded by the Environmental Hearing Board for any proceeding brought under the Act. However, Section 4(b) of PASMCRRA, Section 5(j) of CRDCA, and Section 5(g) of BMSLCA authorize attorney's fees only for administrative proceedings involving permit approval or bond release. However, this would not appear to cover proceedings involving enforcement actions written for failure to comply with the requirements of the Pennsylvania laws. Accordingly, the Secretary has conditioned the approval of Pennsylvania's program on the Commonwealth clarifying its program to ensure that costs and expenses, including attorney fees, can be awarded by the Environmental Hearing Board for any proceeding brought under the aforementioned laws (See Finding 27.1, above.)

6. EPI *et al.* stated that Pennsylvania law does not clearly provide that any interested person may file an appeal from any action of the Department with the Environmental Hearing Board. SMCRA provides that any action, or failure to act, is subject to administrative review. The Secretary disagrees with this comment. Section 1921-A(c) of the Pennsylvania Ad. Code provides in pertinent part that:

* * * no such action of the Department adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board * * *

In addition, Section 7 of TCSL, Section 3.3 of the CRDCA, and Section 16 of the BMSLCA all provide for appeal from Departmental actions to the Environmental Hearing Board. The effect of the Pennsylvania program is further confirmed by the Attorney General opinion, wherein it is stated that:

The applicant, operator, or any person having an interest who is or may be adversely affected by an action of the Department may lodge an appeal within the Environmental Hearing Board by the Act of June 4, 1945 (Pub. L. 1388), known as the 'Administrative Agency Law'. (Administrative Record Nos. PA 321, Pennsylvania Coal Mining Regulatory Program, p. 34 and PA 336).

7. EPI *et al.* commented that PA 21.62 fails to provide for the right of intervention by interested parties who had a right to initiate the proceeding or have an interest which may be adversely affected as required by 43 CFR 4.1110. The Secretary disagrees with this comment. The Pennsylvania rule cited by the commenter does clearly provide for intervention by interested persons. Apparently, the commenter objects to the fact that the Pennsylvania rule does not state specifically, as does the Federal rule, that a person who had the right to initiate the proceeding in the first instance has an absolute right to intervene. The Pennsylvania rule clearly provides for the Environmental Hearing Board to review and act on requests for intervention and, therefore, the State program does ensure that interests of third parties will be represented in the litigation.

8. EIP *et al.* commented that Pennsylvania's regulations do not provide for the availability of public records, inspection reports, enforcement actions and other materials pertinent to the administration of the Act at an office near the mine site as set forth in 30 CFR 700.14, 786.15, 840.14 and 842.16. The Secretary disagrees with this comment. PA 86.35 ensures the public availability of information in permit applications which is no less effective than 30 CFR 700.14 and 786.15. Also, PA 86.214 makes inspection reports and enforcement actions available for public inspection at appropriate DER district offices consistent with 30 CFR 840.14 and 842.16. Moreover, Pennsylvania's Right-to-Know Law, 65 P.S. Section 66.1 *et seq.*, requires that inspection reports be made available to the public.

9. EPI *et al.* commented that Pennsylvania's regulations do not provide procedures for the review of the adequacy and completeness of the inspections in accordance with 30 CFR

842.14. The Secretary finds that the Bureau of Mining and Reclamation's Policy and Procedure Manual provides a procedure for the review of complaints regarding the adequacy and completeness of inspections consistent with 30 CFR 842.14 (Administrative Record No. PA 336, p. 98). Since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to that policy will have to be formally processed as program amendments in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

10. EPI *et al.* commented that the Pennsylvania regulations do not provide for formal review of citations by interested persons in accordance with 30 CFR 843.16. The Secretary disagrees with this comment. Section 101 of Pennsylvania's Administrative Agency Law, Section 1921-A of the Ad. Code, Section 7 of TCSL, Section 3.3 of CRDCA, Section 16 of BMSLCA, PA 86.202, PA 86.214 and PA 21.1 *et seq.* provide for formal review of notices of violations and cessation orders consistent with 30 CFR 843.16.

VI. Bonding

1. PCMA *et al.* commented that PA 86.171(f)(2) provides no timetable for a bond release if an informal conference is not held as established in 30 CFR 807.11(f)(2). While the sixty-day decision deadline is not provided for in the Pennsylvania regulatory program, the Secretary finds that the lack of a deadline is no less effective than the Federal requirement in that it provides flexibility to the regulatory authority in evaluating comments making its decision and notifying all interested parties.

2. PCMA *et al.* commented that the Pennsylvania regulations do not reflect bonding regulations currently being proposed by the Secretary. The Secretary has found that the Pennsylvania bonding regulations in Chapter 86, Subchapter F to be acceptable. The Secretary must base his decision to approve or disapprove the program on existing Federal standards. If the standards upon which the secretarial decision is made are changed, the Secretary can require the Commonwealth to amend its program pursuant to 30 CFR 732.17.

E. Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and for the Secretary to assist the States in becoming the primary

regulators under SMCRA. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them.

As of June 1982, the Secretary has dispensed over \$8.5 million in program development grants and over \$79.2 million in initial and permanent program grants to help the States to develop their programs, to administer their initial and permanent regulatory programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances, OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the state program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to ensure that communication with the states remained open and uninhibited at all times (44 FR 54444, September 19, 1979). This policy was critical in avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under 30 CFR 732.13, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under Sections 201(c), 502(b), and 503(a)(7) of SMCRA.

SMCRA expressly gives the Secretary only two options—to approve or disapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's final decision. It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States that earlier implementation will initiate a much higher degree of environmental protection. It avoids the costly and cumbersome problem of implementing a Federal program where the State submittal was deficient in only minor respects. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used. Second, no part of the program can be incomplete. As the preamble to the regulations states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961, March 13, 1979). That is, a State must be able to operate the basic components of the permanent program: The designation process; the permit and coal exploration system; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of

deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorney general's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. 30 CFR 732.13(i) gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist States in achieving compliance with SMCRA, not to excuse them from compliance.

F. The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Pennsylvania program which the Secretary requires be corrected. In all other respects, the Pennsylvania program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

(1) As discussed in Finding 13.1, impoundments greater than 20 feet in height, or having storage capacity equal to or greater than 20 acre-feet are not required by PA Chapters 87 and 90 to adhere to spillway design and factor of safety criteria imposed in the Federal regulations. This deficiency is minor due to overlapping coverage of these impoundments by the Mine Safety and Health Administration (MSHA) criteria in 30 CFR 77.216-3, which is identical to that in 30 CFR 816. In addition, existing Pennsylvania design standards applicable to such structures are sufficient to provide for adequate environmental and public health and safety protection. The term of the deficiency further minimizes the impact, since emergency rulemaking revising the Pennsylvania regulations to include this requirement has been initiated and should be final by October 1982.

(2) PA Chapters 87 and 90 omit the frequency of inspection requirements for impoundments, as previously discussed in Finding 13.2. Inasmuch as inspection and certification of structures are contained in the Pennsylvania rules, and only the frequency of inspection is lacking, this deficiency is considered minor. MSHA and OSM regulations require identical inspection frequency requirements when larger dams are involved (those meeting the size criteria of 30 CFR 77.216(a)); and, since smaller dams (not meeting the size criteria of 30 CFR 77.216(a)) may be exempted by the regulatory authority when infrequent inspection is allowed, the impact of this omission is minimal. Furthermore, rulemaking, which provides for correction of the omission, has been initiated and should be completed by October 1982.

(3) Finding 13.3 outlines the incongruity of the impoundment requirements of PA Chapters 87 and 90 with respect to various design criteria utilized on the basis of dam size classification. This deficiency is minor when viewed. While the definition of large and small impoundments is inconsistent, regulatory review of these structures is still performed for adequate design and construction. The condition is considered minor as a result of MSHA jurisdiction which remains in effect until the deficiency is corrected. Furthermore, prompt resolution of this deficiency is anticipated when emergency regulations containing these provisions are promulgated in October 1982.

(4) As discussed in Finding 13.4, PA Chapters 87 and 90 omit inclusion of specific monitoring and information requirements for the annual certification report required by Federal rules for permanent dams and impoundments. The absence of these provisions is considered minor, inasmuch as certification of large impoundments is collectively required by Pennsylvania and MSHA regulations and, smaller ponds such as sediment ponds must also be certified. Absent the certification requirements, the operator must still comply with all permit conditions, environmental protection and performance standards. Furthermore, this deficiency will be addressed by the promulgation of the revised rules in October 1982.

(5) As discussed in Finding 13.5, Pennsylvania's regulations provide for variances to approximate original contour for non-steep slope areas. This deficiency is minor because Section 4(a)(2)(E)(i) of PASMCR provides that such variances may include conditions which require complete backfilling, highwall elimination, watershed

protection, etc., which could satisfy Sections 515(e) (1) and (3) of SMCRA. Also, such variances will not be approved if they pose an actual or potential threat to public health and safety, or of water pollution. Furthermore, few, if any, variances are expected to be approved before Pennsylvania's regulations are amended to conform with Sections 515(e) (1) and (3) of SMCRA.

(6) Pennsylvania's regulations, as discussed in Finding 13.8, do not require the establishment of diverse vegetative cover for underground-mining operations. This deficiency is minor because the surface area affected by underground operations is usually minimal, and Pennsylvania will require the establishment of a permanent and effective vegetative cover for such operations. Due to the duration of mining of such operations, few, if any, operations will complete this phase of reclamation before the deficiency is corrected.

(7) As discussed in Finding 14.1, Pennsylvania regulations regarding coal refuse disposal do not require the operator to submit in the permit application a description of archeological sites within adjacent areas. This deficiency is minor because archeological sites within the permit area will be described and protected, and it is unlikely that any archeological sites adjacent to coal refuse areas will be impacted prior to Pennsylvania's amending its regulations.

(8) As discussed in Finding 14.2, Pennsylvania's anthracite mining regulations do not require that the operator submit with the permit application a description of historic land use if the premining use of the land has changed within five years prior to beginning mining. This deficiency is minor because Pennsylvania has indicated in its program that it will request this information in the permit application.

(9) As discussed in Finding 14.3, Pennsylvania's anthracite mining regulations do not require that the applicant conduct a prime farmland investigation. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to require such investigations. Pennsylvania officials have indicated that they will utilize this authority, if need be, to ensure that prime farmland investigations will be conducted until (1) an investigation of the anthracite region is completed to determine if prime farmland exists in the region and, if so, whether it has been historically used as cropland or (2) pending further

rulemaking. The USDA, SCS, has provided prime farmland soil maps and studies (Administrative Record No. PA 331) where available and has indicated an interest in participating in prime farmland soil identification (Administrative Record No. PA 377) as required by section 507(b)(16) of SMCRA.

(10) As discussed in Finding 14.4, Pennsylvania's regulations regarding permitting of impoundments lack the required continuity of the Federal provisions regarding registered professional engineer involvement throughout general and detailed plan preparation. This deficiency is minor in that the plan requirements are still in force and the regulatory authority will require correction if the review process identifies that the general plan is unacceptable. In addition, Pennsylvania has proposed amendments to its regulations which should be effective by October 1982, and will eliminate this deficiency.

(11) As discussed in Finding 14.5, PA 90.39 does not require geotechnical, design and construction information in the detailed design plan for non-coal waste impoundments. This is considered minor in that the totality of plan requirements and performance standards still apply and will provide for an adequate margin of safety until regulations are promulgated. Also, for any structure which meets or exceeds MSHA size criteria, the applicant will be required to prepare this data in accordance with 30 CFR 77.216-2, leaving only smaller structures to be governed by the situation described above.

(12) PA Chapters 87 and 90 do not require geotechnical information on embankment and foundation materials for all size dams, as indicated in Finding 14.6. This issue is considered minor because of the coverage of these requirements in MSHA regulations for larger dams and because of the collective applicability of all permitting and performance requirements until regulatory revisions recently proposed by Pennsylvania become effective in October 1982.

(13) As stated in Finding 14.7, PA Chapters 87 and 90 fail to require stability analyses for impoundments which are under the jurisdiction of MSHA (30 CFR 77.216(a)). This deletion is considered minor since MSHA regulations require the submission of a stability analysis through 30 CFR 77.216-2(a)(13) until the Pennsylvania proposed rules containing this requirement become effective in October 1982.

(14) As discussed in Finding 14.8, Pennsylvania's anthracite regulations do not require that the permit application

contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area. This deficiency is minor because Pennsylvania has indicated in its program that it will require this information as part of the permit application for underground mining operations.

(15) As discussed in Finding 14.9, Pennsylvania's underground mining regulations do not require the permit application to contain maps which delineate the location of certain surface features for the entire permit area. This deficiency is minor because Pennsylvania will require the identification of surface features for the subsidence plan area, which in most instances, will require the illustration of all surface features for underground mining operations until the deficiency is corrected.

(16) As discussed in Finding 14.10, Pennsylvania's underground mining regulations do not require that permit applications contain maps showing the location of all buildings within 1,000 feet of the proposed permit area together with identification of the current use of such buildings. This deficiency is minor because Pennsylvania's existing regulations require that the location and use of all buildings be identified. By lacking the specific distance requirements, it is not anticipated that any adverse impact will occur since few, if any, underground mining operations will be permitted before the deficiency is corrected.

(17) As discussed in Finding 14.12, Pennsylvania's anthracite mining regulations do not require that an application obtain a negative determination with respect to prime farmland when proposing to mine coal in the anthracite region. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to require an applicant to obtain a negative determination prior to mining. Furthermore, Pennsylvania has indicated that this requirement will be enforced for anthracite permits pending completion of a prime farmland investigation of the anthracite area or pending further rulemaking.

(18) As discussed in Finding 14.13, Pennsylvania's program does not require the reconstruction of nonconforming structures within six months after issuance of a permit. This deficiency is minor because emergency rulemaking providing for this requirement is expected to be completed by October 1982. Therefore, all nonconforming structures in Pennsylvania will have to

be reconstructed within six months after permit issuance.

(19) As discussed in Finding 18.1, Pennsylvania's anthracite regulations do not prohibit bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to prohibit bond release until after soil productivity for prime farmland has been restored. Pennsylvania has indicated that it will utilize its authority to enforce this requirement for anthracite permits until after completion of a prime farmland investigation in the anthracite region or pending further rulemaking.

(20) As discussed in Finding 20.1, Pennsylvania's regulations do not adequately limit the circumstances when additional time beyond the 90-day abatement period may be allowed. This deficiency is minor because Pennsylvania only provides for additional time if it is essential for the achievement of statutory standards of environmental protection. Also, emergency rulemaking to provide for the correction of this deficiency should be concluded by October 1982.

(21) As discussed in Finding 20.2, Pennsylvania's regulations do not provide for mandatory review and suspension or revocation of a permit based on a pattern of violations. This deficiency is minor because Pennsylvania has the legal authority to require the suspension or revocation of a permit based on a pattern of violations, even though the provisions set forth in the Bureau of Mining and Reclamation's Policy and Procedure Manual do not mandate the DER to do so. Further, it is unlikely that any operator will develop a pattern of violations before this policy is corrected.

(22) As discussed in Finding 27.1, the Pennsylvania program does not provide that costs and expenses, including attorney fees, can be awarded for any administrative proceeding. This deficiency is minor because the Commonwealth has agreed to submit a memorandum of law providing for the award of such costs and expenses by law until regulations can be promulgated clarifying existing statutory provisions.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Pennsylvania program, the Secretary of the Interior has concluded that they are minor

deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Pennsylvania program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

4. Pennsylvania has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Pennsylvania has agreed, by letter dated June 16, 1982, to correct the regulatory and statutory deficiencies by the dates specified in 30 CFR Part 938.

Accordingly, the Secretary is conditionally approving the Pennsylvania program. The Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program if provisions correcting the deficiencies are not made by the dates specified in 30 CFR Part 938.

This conditional approval is effective July 31, 1982. Beginning on that date, the Pennsylvania Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania and all Pennsylvania surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Pennsylvania shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Pennsylvania, the permanent regulatory program consists of the state program approved by the Secretary.

The Secretary's approval of the Pennsylvania program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mined land reclamation program. In accordance with 30 CFR Part 884, Pennsylvania may submit a state reclamation plan now that its permanent program has been approved. At the time of submission, all provisions relating to abandoned mined land reclamation will be reviewed by officials of the Department of Interior.

G. Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

On August 28, 1981, the Office of Management and Budget (OMB) granted

OSM an exemption from Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 938 as set forth herein.

Dated: July 12, 1982.

James G. Watt,

Secretary of the Interior.

PART 938—PENNSYLVANIA

Sec.

938.1 Scope.

938.10 State regulatory program approval.

938.11 Conditions of state regulatory program approval.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.)

§ 938.1 Scope.

This Part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11, are available at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 787-4686

Office of Surface Mining, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone: (202) 343-7896

§ 938.11 Conditions of state regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the component of the program to which the Secretary recommends the change be made.

(a) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that a permit application for coal refuse operations contain a description of archeological sites within adjacent areas of a permit area which is no less effective than 30 CFR 779.12 and in accordance with Section 507(b)(13) of SMCRA; and (2) that a permit application for anthracite mining operations contain a description of the historic land use if the premining use of the land has changed within five years preceding mining which is no less effective than 30 CFR 779.22(a)(1) and in accordance with Section 508(a)(2)(A) of SMCRA.

(b) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the contents of the "general plan for impoundments associated with surface mining operations be prepared by or under the direction of and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields which are no less effective than 30 CFR 870.25(a)(1)(i) and in accordance with Section 507(b)(14) of SMCRA; (2) that the detailed design plan must include any geotechnical investigation,

design and construction requirements impoundments associated with coal refuse operations which are no less effective than 30 CFR 780.25(a)(2)(ii), 780.25(a)(3)(ii) and in accordance with Sections 507(b), 508(a) and 510(b) of SMCRA; (3) that plans for impoundments associated with surface mining and coal refuse operations contain geotechnical information on the type, size, range of engineering properties of the embankment and foundation materials which are no less effective than 30 CFR 780.25 (b) and (c) and in accordance with Sections (507(b), 508(a) and 510(b) of SMCRA; and (4) that a stability analysis, supporting calculations and justification of parameters be prepared for impoundments associated with surface mining and coal refuse operations which meet MSHA criteria (30 CFR 77.216(a)) which are no less effective than 30 CFR 780.25(f) and in accordance with Sections 507(b), 508(a) and 510(b) of SMCRA.

(c) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the permit application for anthracite underground mining operations contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area which are no less effective than 30 CFR 783.24(a) and in accordance with Section 507(b)(2) of SMCRA; (2) that the permit application for bituminous underground mining operations contain maps identifying the location of certain surface features for the entire permit area which are no less effective than 30 CFR 783.24, 783.25 and in accordance with Sections 507(b) (13) and (14) of SMCRA; and (3) that the permit application for both anthracite and bituminous underground mining operations contain maps showing the location of all buildings in and within 1,000 feet of the proposed permit area together with identification of the current use of such buildings which are no less effective than 30 CFR 783.24(d) and in accordance with Sections 507(b)(13) and 522(e)(5) of SMCRA.

(d) Termination of the approval found in Section 938.10 will be initiated on August 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the applicant conduct a prime farmland investigation prior to mining in

the anthracite region which is no less effective than 30 CFR 779.27, 783.27 and in accordance with Section 507(b)(16) of SMCRA; (2) that the applicant obtain, with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is no less effective than 30 CFR 786.19(1) and Section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) in accordance with Section 519(c)(2) of SMCRA.

(e) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require that the reconstruction of existing non-conforming structures occurs within six months after issuance of a permit without causing significant harm to the environment or public health or safety as provided by 30 CFR 786.21.

(f) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that impoundments associated with surface mining and coal refuse operations comply with the spillway design and factor of safety criteria which is no less effective than 30 CFR 816.46(q) (1) and (2); (2) that impoundments associated with surface mining and coal refuse operations be routinely inspected as provided by 30 CFR 816.46(t) and 816.49(f); (3) that impoundments associated with surface mining and coal refuse operations which met MSHA criteria (30 CFR 77.216(a)) comply with the requirements of U.S. Soil Conservation Technical Release 60, *Earth Dams and Reservoirs*, June 1976, which are no less effective than 30 CFR 816.49(A)(5); and (4) that annual certification reports for ponds, dams and impoundments associated with surface mining and coal refuse operations contain information on monitoring and instrumentation, design versus actual water levels periodically taken throughout the reporting period, existing storage capacity, the presence of fires, and any other aspects of the dam which might affect stability which is no less effective than 30 CFR 816.49(h) and in accordance with Sections 515(b) (4), (8) and (10) of SMCRA.

(g) Termination of the approval found in Section 938.10 will be initiated on

May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to provide that variances to approximate original contour for surface mining in non-steep slope areas will require complete backfilling, removal of the highwall, improvement of the watershed control of the area, and concurrence of appropriate land use planning agencies and surface owner(s) that the potential use of the affected land will constitute an equal or better economic or public use in accordance with Sections 515(e) (1) and (3) of SMCRA.

(h) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require the establishment of a diverse vegetative cover for underground mining operations which is no less effective than 30 CFR 817.111(a) and in accordance with Section 516(b)(6) of SMCRA.

(i) Termination of the approval found in § 938.10 will be initiated on October 1, 1982, unless Pennsylvania submits to the Secretary by that date, a memorandum of law statement providing that costs and expenses, including attorney fees, can be awarded for any administrative proceeding which is no less effective than 30 CFR 840.15. Furthermore, the Commonwealth must submit by August 1, 1983, copies of enacted laws, or other program amendments providing for the award of costs and expenses which is no less effective than 30 CFR 840.15 and in accordance with Section 525(e) of SMCRA.

(j) Termination of the approval found in § 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to (1) limit the circumstances when abatement times in excess of ninety days will be permitted to be the same or similar as 30 CFR 843.12 and no less stringent than Section 521(a)(3) of SMCRA; and (2) provide for mandatory review of permits for a pattern of violations and suspension or revocation of a permit based on a pattern of three or more violations within a 12-month period if committed willfully or through unwarranted failure to comply to be the same or similar as 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA.

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